

THE
King's Supremacy

ASSERTED:

OR A

1616
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REMONSTRANCE

OF

The King's Right

Against the PRETENDED

PARLIAMENT.

The Third Edition, Corrected, Amended and
Enlarged, by ROBERT SHERINGHAM, M. A.
and late Fellow of *Gunvill*, and *Cambridge* College in
Cambridge; The Author of *Codex Jona & Disceptatio*
de gentis Anglorum Origine.

L O N D O N,

Printed for James Hart and

THE KING'S RIGHT

AND THE PEOPLE'S

REMONSTRANCE

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Son of Wm. the 1st of Great Brittain
TO HIS

Most EXCELLENT MAJESTY

CHARLES II.

By the Grace of God, KING of
England, Scotland, &c. Defender of
the Faith.

Most Gracious and Dreadful Sovereign,

THE Pretended Parliament of
England having their Agents
lately in the Low-Countries,
Treating with the United Pro-
vinces about Conditions of an offensive and
defensive War, my resolution was to have set
out this Remonstrance in the Dutch Tongue
for the satisfaction of those Provinces: but
the Treaty ended almost as soon as I began to
actuate my resolution; whereupon I altered
my purpose, and have now set it out in English
for the satisfaction of your own Subjects, ho-
ping the truth being here clearly illustrated,
may have some effect upon their Consciences.

A 2

which

Patterson

Director of Patterson
Norfolk

which cannot but have great sway over them
in ordering and directing their Actions. Ex-
perience teacheth that most men act less boldly
and resolutely, (especially where their lives
must be engaged) when they act against their
Conscience, than when they are perswaded
of the lawfulness and justice of their cause.
There hath been more blood spilt by Civil
War in your Majestie's Dominions within the
space of ten years, since those pernicious
principles touching the Supremacy of the
People and Lawfulness of resistance have
been instilled into mens minds by some who
fetcht their doctrine from Hell to furnish
the World with Tragedies, than formerly in
an Hundred. I conceive the nearest and rea-
diest way to reform such unchristian practices,
is to reform the Conscience; although I deny
not but more sharp and violent remedies must
also be applied: for some have lost all sense
of Conscience, whom your Majesty, I hope,
assisted by the Almighty Providence of God,
shall reform by the Sword. This is that
which Religion calls for at your hands, now
oppressed by such a multitude, and confused
swarm of Sectaries, that I should think it
impossible

impossible for so many men of several Religions to live together in unity, did not the Likeness of their Nature and Manners reconcile their affections, as much as their differences in Religion can alienate and estrange them. And this is that which all your faithfull Subjects pray for, who desire nothing more in this world than to see your Majesty seated in your Royal Throne, and able to protect them from the insolencies of the Rebels, who make their will their law, disposing as freely of mens lives and fortunes, as if they had created them and given them their Being.

It is a rule in Opticks, when a dark body is greater than a light to which it is directly opposed, it casteth a shadow in infinitum: Such a shadow (if the Continent were capable of an infinite shadow) will the dark body of the Rebels cast upon the Kingdom of England, whilst it is interposed between your Majesty and your Loyal Subjects, depriving them both of your favourable Aspect, and of your Light and Influence, without which they can look for nothing but a continuation of their present miseries: For should the Rebels prevail

vail and prosper in their designs; what else can be expected, but that which is wrested from others by Force and Violence, should be maintained by Tyranny and Injustice? But whilst they wade in blood to places of preferment and command, the Lord shall overthrow them in the midst of their course, as he overthrew the Egyptians in the Red-sea; I usurp not the name of a Prophet, but I speak as one believing God to be a faithful observer of his promises: He will not always be deaf to the prayers and complaints of those that are oppressed, but send them deliverance in his due time, and supply your Majesty with all things necessary both to vindicate your own Rights, and free your People from their oppression.

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INTRODUCTION.

The Beginning, Rise and Progress of the Rebellion raised by the Pretended Parliament. The Principles whereby they endeavour to justify their proceedings. The Questions that shall be discussed.

I Look upon the Government of England, if the Laws might be restored to their ancient dignity and authority, as inferiour to none in the world. Parliaments, whilst the King and Parliament have acted in their several spheres, and not invaded the rights and privileges of one another, have always been the surest means under God to unite their affections together, and to prevent those dangers which by their mutual discord must of necessity have ruined both. Some are so rash as to affirm, that all Transactions, Negotiations and Accords between Kings and Subjects ought to be interdicted; not only depriving Subjects of the light and favours which they should receive from their Prince, but Princes also of many commodities which they may receive by capitulating with their subjects in Parliaments, where the whole Kingdom being present, either in person or by representation, may give the King, and receive from him again, such reciprocal testimonies of love, that he may be assured his people seek nothing more than the preservation of his life, honour and Royal dignity; and they, that their King endeavoureth no less to encrease and maintain the liberty, riches and prosperity of his people. And I am

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confident the last Parliament had been as great a blessing to the Land, as ever any was in former ages, had not the ambition, avarice and malice of some interrupted the course of the Laws. But for this assembly of Traitors which hath a long time called themselves a Parliament, (sitting without the House of Lords, and secluding from the House of Commons, all that would not be as cruel, barbarous and wicked as themselves) it is a disturber of the Kingdoms peace, an enemy and destroyer of the people; and if we look upon their actions in their beginning, in their rise, and in their progress, they may seem to have had always a formal opposition to justice, and to have acted by some occult and specifical quality not common to other Christians. There was indeed at the first beginning of the Parliament, much murmuring and discontent amongst the people, partly caused by the Monopolies, and unusual taxation of Ship-money, and partly occasioned by the abuses of divers Courts. Here the enemies of the Common-wealth finding a spacious overture to enter into this Rebellion, began to act their parts; and being too provident to lose such an advantage, laboured to exasperate the minds of the people, and to stir up those evil humours which began already to appear. And although his Majesty offered all just satisfaction for what was past, and the best security themselves should in reason require, that the like Disorders might for ever after be prevented, yet these turbulent and factious spirits, being for the most part men of broken fortune, and hoping to heal themselves by the ruine of others, opposed all such motions, and would needs themselves become Chyrurgeons to the State; and as Chyrurgeons are wont to smooth and stroke the parts which they resolve shall bleed; so they began to smooth and stroke the people, promising them a new light in matters of Religion, and that they would remove the grievances, and sweeten the evils which afflicted the Common-wealth:

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wealth: although instead of removing and sweetening them, they have almost made them incurable. By these persuasions mixed with many pretences of Religion they procured the people to meet together in great multitudes, and in a tumultuous manner to assault divers of the Lords as they were going to the Parliament, and to drive them back again, not permitting them to speak in the House when their Speech was most necessary for the service of the Kingdom. Although it was easie for his Majesty to discover their intentions, yet the love he bare his people made him to dissemble it, and to give way to their proceedings, hoping they might in time be brought by his favours to mitigate and correct their furious practices; but finding at last that his patience served for nothing else but to fortifie and encourage them in their malice, he thought himself obliged to take such ways as he judged most convenient to stop the course of their proceedings, the continuation whereof was like to bring so many mischiefs to the Common-wealth: and seeing it was like to be prejudicial to the safety of the people, as well as to his own to stay longer in a place, where there was neither security for his person, nor liberty for any other than those factious persons to Vote according to the dictates of their own reason, he was forced to withdraw himself from the Parliament to avoid the pernicious effects of those mens counsels which were resolved the whole Common-wealth should sink rather than themselves not obtain those places of command and profit which they aimed at. The King being gone, it was not to be wondered if they which in his presence had the boldness to weave such pernicious designs against the State, should in his absence endeavour to corrupt the fidelity of his Subjects, for having the City of London wholly at their command, they neither wanted means nor opportunity to draw the people to their

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their faction, who by such artificial devices as they used were
easy to be insnared : They told them, that by resisting the
King, they should not be Rebels, but an Army authorized by
those which were Depositories of the King's authority ; that
this resistance was an inspiration from heaven which promi-
sed the restoration of their ancient liberties, which, they
said, had been so often violated by the King : They made
them believe that the authority of the King, and the whole
Common-wealth, would be brought into confusion if they did
not vigorously oppose those disorders were growing upon them,
and remove those evil Counsellors from the King that did mis-
lead and seduce him ; and withall they set out a Declaration
promising to preserve and defend the King's Majestie's Per-
son and Authority, together with the Liberties of the King-
dom, assuring them they had no thoughts or intentions to di-
minish his Majestie's just power and greatness, or any way to
alter the constitution of the Government, or of Parliaments
consisting of a King, a House of Lords and a House of Com-
mons. But now we see the effects contrary to those words and
promises which were so solemnly made to the whole Kingdom :
for they have not only diminished his Majestie's just power
and greatness, overthrown the nature and very being of Par-
liaments, but most traitterously deprived his Majesty of his
life, and that after he had condescended so far as to satisfie
all their unreasonable demands : which fact of theirs, although
it hath been masked with many specious pretences, and co-
loured with the fairest shews of Justice ; yet was it the most
execrable murder that ever was committed next that of our
Saviour Christ : and his ambitious Judge hath gained this,
that next PILATE, BRADSHAW of all such
Judges shall by posterity be esteemed the chief. This murder
of the King, as it was most unjust, so was it also most unsea-
sonable considering the present disposition of the Kingdom,

whose

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whose strength being already too much weakened and attenuated, ought not to have been further wasted and consumed by renewing the War, which the Death of the King did threaten. But such motions could work nothing upon those which had long before resolved to make all other considerations give place to profit and ambition: the people abused themselves whilst they thought this factious assembly would be more careful and tender of them than of the King: for they have not only brought a new War upon them which might have been avoided, dishing them all against one another, but have also themselves many ways barbarously afflicted and destroyed them: they have made the Scaffold, the Gibbet, the Prison and the Grave, the common places of their rendezvous; and those which they have not devoured by their cruelty, they devour by their insatiable avarice; whilst they declaim against Kings for oppressing the people by unjust taxations, they have themselves, as hath been computed by many, squeezed more in one year from the Common-wealth than all the Kings of England have done since the Conquest. The lawful Magistrates are deprived of the liberty and honour of their functions; and such as are the greatest enemies to justice are set up in their places; some are bereft of their estates, others are driven out of the Kingdom, and forced to seek a foreign air, where they may breathe more freely than in their own. The whole Nobility, Clergy and Commonalty walk desolately and mournfully up and down, being no more like the men they were, than the skins of sacrificed beasts are like their living bodies. And after all these indignities offered to the King and People, they endeavour contrary to the Laws to alter the Government, and to pull up the very foundation of the Kingdom, calling their new frame and structure a Free Estate, and themselves the keepers of the freedom of England. Thus having guilt over this idol of their own fancy,

fancy, they force all men to sell down and worship it; they whose virtue oblige them to refuse, are cast into a furnace hotter than that of Babylon.

Seeing the body of the Kingdom devoured thus to the very entrails, I could not without borrow behold such a miserable carcase so rent and torn in every part, nor could I satisfy mine own conscience if I should not endeavour according to my poor abilities to oppose the rage and fury of these men which are grown so fat with the blood and spoil of others: My intention therefore is reserving matters of fact to speak here of matters of right, and to shew the injustice of their cause, and discover the falshood of all those Principles whereby they endeavour to justify their proceedings; not doubting but I shall so far convince the understanding of all those that shall read this ensuing discourse, that they shall not hereafter enter into any combination with the rebels, or continue with them in them in case they be already engaged, except their hearts be hardened so far, as they dare all in matters of such concernment contrary to their consciences.

The principles and grounds whereby they endeavour to justify this present War against the King, are two: First they say, that it is lawful for the people to resist their Sovereign and Supreme Governours by force of arms in case they be Tyrants, and bent to subvert the Laws and Religion established, or by illegal proceedings invade the lives, estates or liberties of their subjects. But there is some disagreement amongst them in the restriction and limitation of their Principle; for some give free scope and liberty to all private persons to resist, and with their swords in their hands to defend their lives and estates against the unjust invasion of all Kings and Governours whatsoever. Others do a little stint the people, and limit the bounds of resistance, permitting none to have that power but subordinate Magistrates, or the people collectively

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collectively taken, and their substitutes in Parliament. Yet these content themselves with the same particular instances brought by others, alledging little besides particular examples, as the example of David who (as they say) would have resisted Saul if occasion had been offered; The example of the Priests, who (as they say) assailed Uzziah, and such like examples of particular men, which were neither the people collectively taken, nor their substitutes in Parliament, nor yet the greater part subordinate Magistrates.

But some have thought upon another way how to make good their rebellion, confessing the former assertion to tend directly to the ruine and subversion of Government, and to be also contrary to the Law of God: these proceed upon another Principle, namely, that supreme jurisdiction belongs to the People, the King they say is major singulis, but minor universis, greater and hath more authority than any one of his subjects taken by retail, but taken in the gross his subjects are greater and have more authority than he; and these agree altogether in this, that they teach all authority to be originally in the people tanquam in primo subjecto creato, as in the first subject immediately under God, and from them translated to Magistrates. Yet these are also divided amongst themselves about the extent and latitude of the power that may be translated; for some of them say, that the Rights of Sovereignty belong to the people by the Law of nature, and are so essential to them, that they cannot be separated or divided from them; they cannot be taken away by conquest, they cannot part with them by consent, but under what form of Government soever they live, by what means soever established and set up, they have still reserved in them a supreme jurisdiction over all Magistrates, by which they are authorized to give a legal judgment upon all their actions, and to re-
sume

sume again their whole authority when they shall see occasion, making a circle in Government, and granting power in Magistrates to judge and govern the people, and also in the people to judge and govern their Magistrates. Others on the contrary side say, that the people may lose the rights of Sovereignty by conquest, or part with them by consent, so that they shall not reserve to themselves supreme jurisdiction over their Magistrates to judge juridically whether their actions be legal or illegal; but the people of England (they say) have not de facto parted with their authority in such a full degree, but are supreme by the Laws of the Land, or at least coordinate with the King; for at the first coalition of the government by paction and agreement made with the King, they reserved to themselves a part in the Rights of Sovereignty which they still hold by Law. This is their other Principle as destructive to government as the former, and the authors and maintainers of them both agree well enough in their end, that is, to stir up the people to rebellion: only they of the first rank would persuade them they may lawfully do it by way of self-preservation; and they of the second, by way of jurisdiction.

I intend now, by Gods assistance, to examine these mischievous Principles, and to discover as well the falsity of them, as the dangerous consequences that flow from them, which I hope to perform with such clearness and evidence, that the most hard-brain'd Sectaries among them shall be convinced, if they will but read that which shall be alledged against them.

THE
KING'S SUPREMACY
ASSERTED.

*Whether the People and their Deputies in
Parliament be supreme, and above the
King or coordinate with him by the Laws
of the Land.*

CHAP. I.

The state of the Question explained.

THE Question now to be discussed is
Whether the People and their Deputies
in Parliament be supreme and a-
bove the King or coordinate with
him by the Laws of the Land. The
pretended Parliamentarians affirm
the two Houses to be coordinate
with the King in the rights of So-
veraignty; for the Monarchy of England, they say is a
mixed Monarchy, and this mixture is in the power and
rights of Majesty themselves, so that the King alone hath
not full and plenary authority to perform all acts requi-
site to Government, but that there is in the Monarchy a
concurrency of several powers belonging to several estates,

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which being mixed together make up one whole and entire power, and those several estates one supreme head of the Common-wealth. And although some of them are so liberal as to allow the King a primity of share in this coordination; yet others say that the superiority belongs to the two Houses, the King being greater than any one of the Members of Parliament, but less than the two Houses collectively taken, who in the legislative power, which is one of the principal rights of Sovereignty, have a greater Interest than He, in whose breasts alone remaineth the final determination of Law; for they deny the King to have a negative voice, as if his sitting in Parliament were a ceremony and meer formality, and not an act of Majesty and Jurisdiction. This foundation, as I think, was first laid by the fuller Answerer, but the Treatiser, the Reverend Divines, and divers others have added a superstructure to it of many fine and new inventions of their own, which are not needfull to be here related, because they alter not the state of the Question; for they all affirm the two Houses to be coordinate with the King in the rights of Sovereignty, and the mixture of the English Monarchy to be in the power it self. I will set down their Assertions in the fuller Answerer's own words. *Before we judge, saith he, of what a Parliament can doe in England, it will be needfull to know what kind of Government this of England is, we are therefore to know that England is not a simply subordinative and absolute, but a coordinative and mixt Monarchy. This mixture or coordination is in the very Supremacy of power it self; otherwise the Monarchy were not mixt: all Monarchies have a mixture, or composition of subordinate and under officers in them; but here the Monarchy or highest power it self is compounded of three coordinate estates, a King, and two Houses of Parliament. And again a little after, he saith; But you'll say, what? is not the Parliament subordinate to the King? are they not all Subjects? I answer, the Parliament cannot be said properly to be a Subject, because the King is a part, and so he should be subject to himself: no, nor are the two Houses*

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Houses without him subjects, every Member (severally taken severally, is a Subject, but all collected in their House are not. In his Answer to Doctor Fawcett's Reply he adds further. Although every one and all the Members are Subjects, the House cannot properly be said to be subject and coordinate too; they are the two membra dividenda, which must as no bond admit coincidence: nay, tho' all the Members at parts, and put them together too, are Subjects, yet all the parts of a whole taken all together are not equal to the whole, the order, site, relation, union of the parts, whence the formality of the whole results, being still yet wanting. These are the phantasies of the pretended Parliamentarians, which are so gross and contrary to Law, that the fuller Answerer seems to me to have been in a dream, when his head was first impregnated with such conceptions; And although I cannot but acknowledge that both the liberty and safety of the Nation consists in Free-Parliaments, yet I cannot forbear to declare the Truth in such a time as this, wherein Parliaments are abolished, and yet their Authority and Supremacy pretended to maintain Tyranny and Rebellion.

I say therefore in opposition to these phantasies, first, that the King alone is by the Laws of the Land the onely Supreme head and Governour of *England*, and that the people and their deputies in Parliament, taken both *collectim* and *seorsim*, as well *collectively* as *severally*, are his Subjects, and not coordinate with him: there is no mixture at all in the rights of Sovereignty; for in respect of the power it self, the Monarchy is absolute, simple, pure, independent, without profanation of outward mixture, the King alone without further influence from the two Houses having full power and Authority to doe or cause to be done all acts of Justice. The King alone makes Laws by the assent of the two Houses, and if the two Houses are said at any time to make Laws, it is by a delegate power and authority communicated to them from him, and not by any power and authority which they have radically in themselves.

The King's Supremacy Asserted.

Secondly, I say that the King alone is not onely invested with all the rights of Sovereignty, but hath them also so inseparably annexed to his Royal Person by the Laws of the Land, that they cannot be separated from him by any Act of Parliament, by any civil constitution, or pragmatical Sanction, by any Law or Ordinance whatsoever: but in case the King himself should improvidently by Act of Parliament agree to any thing tending to the diminution of his Royal Dignity, it is then in the power of the Common-law to controul such a Statute, to make void all such acts as tend to the degradation, much more such as tend to the annihilation of Majesty. Having thus opened the state of the Question, I will now proceed to demonstrate the truth by Statutes, by Common-Law, and by reasons depending upon the Laws and Customes of the Land.

C H A P. II.

The King's Supremacy in general shewed by the Statutes of the Land.

I Could, both from Saxon and divers other Laws and Antiquities shew the Kings of *England* to have ruled more absolutely, and to have anciently exercised a larger Jurisdiction, than hath of later years been exercised or challenged by their Successors: but because many immunities and privileges have been granted to the Subjects since their times; I will therefore confine my self to such statutes as have been made since the giving of the great Charter. And, to avoid tediousness, I will omit many statutes wherein the King is by both Houses collectively taken acknowledged to be Supreme: for they frequently in the statutes style him, *Our gracious Sovereign Lord the King.*

Our

The King's Supremacy Asserted.

Our dreadfull Sovereign Lord the King. I will likewise omit many others wherein they acknowledge themselves to be his Subjects, and that when they were in their relation, order, and union, in which posture the fuller Answerer fancies them to be coordinate: for such expressions run through diverse statutes, *Most humbly beseech your most excellent Majesty your faithfull and obedient Subjects the Lords Spiritual and Temporal, and the Commons in this your present Parliament assembled.* In their most humble wise shewen unto your Royal Majesty your loving Subjects the Lords Spiritual and Temporal, and the Commons of this present Parliament assembled. I will onely alledge such statutes as have been made on purpose to declare to whom Supremacy and all power and jurisdiction belong: for there hath been divers acts of Parliament made to that end upon severall occasions, wherein the King's Supremacy hath been acknowledged and confirmed unto him.

In the four and twentieth year of Henry the eighth an Act was made that no Appeals should be used but within the Realm: the Reason alledged in the Statute is, because the King alone is the onely Supreme head of the Realm, and is furnished with plenary and entire power to doe all acts of justice. Where by divers sundry old authentick Histories and Chronicles it is manifestly declared and expressed that this Realm of England is an Empire and hath so been accepted in the World, governed by one Supreme head and King, having the dignity and Royal state of the imperial Crown of the same: unto whom a body politick, composed of all sorts and degrees of people divided in sexes and by names of Spirituality and Temporality been bounden and owe to bear due to God a natural and humble obedience, beeking also institution and furnished by the goodness and sufferance of Almighty God with plenary, whole and entire power, preeminence, authority, prerogative, and jurisdiction, to render and yield justice and final determination to all manner of folk, residents or Subjects within this his Realm. This clear testimony of the King's Supremacy, is thus eluded by the fuller Answerer.

We.

The King's Supremacy Asserted.

Answer.

We understand not, saith he, what is meant by governed by one supreme head; such a one as is able to doe all acts of needfull justice, which the King in his natural capacity cannot doe (he cannot make a law) it must therefore be understood in his full and intire politick capacity, which takes in Law and Parliament; nor can it be said that by those words a body politick compact of all sorts and degrees the Parliament is properly meant, but the Kingdome at large.

Reply.

§§. H. 8. c. 1.

The sum of his Answer is this, that in this Statute by the King not the King alone, but the King and the two Houses of Parliament are to be understood, and so although he would have the King's power to be less, yet to make him amends he will have his name to signifie more than it did before. But this is nothing else but the evaporation of his own brain; for if in any place the word King could signifie the King and the two Houses of Parliament, yet in this it must of necessity signify the King alone: these words *having the dignity and Royal state of the Imperial Crowne of the same*, can have reference to no other. Besides, in this Answer he contradicts his own Principles: for if the two Houses be coordinate with the King, and have power radically in themselves, not derived from him, they cannot be comprehended under his politick capacity. Whereas he saith *the King cannot make a Law*, and infers from thence that the King alone without taking in the two Houses hath not intire and plenary jurisdiction, his inference is very infirm; for it doth not diminish Majesty, but redounds to the glory of it, to give laws to the people by the counsel and assent of wise men: It hath been, and is for the most part the practice in absolute Monarchies, to make Laws that shall bind posterity by general consent and agreement, which yet doth not deprive the Monarch of his power, or derogate any way from the plenitude and intireness thereof. But I shall speak more of this when I come to answer these objections. Whereas he saith that by a body politick compact of all sorts and degrees, not the Parliament, but the Kingdome

Argum. 1. 8.
c. de leg.

The King's Supremacy Asserted.

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at large is properly meant, I know no man will contradict him. Yet I say the two Houses are comprehended under the Kingdome at large, and are Representatives thereof in Parliament, and representatives cannot be the head, when the Kingdome at large, whose Representatives they are, is but the body. And therefore here the fuller Answerer hath a little overshot himself; for if by the body politick, the Kingdome at large be understood, then is the King major universis greater than all the people collectively taken by his own confession.

In the first year of Queen Elizabeth another Act was made, wherein she was declared Supreme head of the Realm in all causes as well Ecclesiastical as Temporal, and an Oath injoynd to be taken by divers both Ecclesiastical and Lay persons, wherein they were to acknowledge her supremacy, and to promise faith and true Allegiance: the Oath was this, I A B. do utterly renounce and declare in my conscience that the Queens Highness is the only Supreme Governour of this Realm, and of all other her Highnesses Dominions and Countries, as well in all Spiritual or Ecclesiastical things or causes, as Temporal, and that no foreign Prince, Person, Prelate, State or Potestate hath or ought to have any jurisdiction, power, superiority, preeminence, or authority Ecclesiastical or Spiritual within this Realm, and therefore I do utterly renounce and forsake all foreign jurisdictions, powers, superiorities and authorities; and do promise that from henceforth I shall bear faith and true Allegiance to the Queens Highness, her Heirs, and lawfull Successors, and as my power shall assist and defend all jurisdictions, privileges, preeminences and authorities, granted or belonging to the Queens Highness, her Heirs, & Successors, or united & annexed to the imperial Crown of this Realm; so help me God and the Contents of this Book.

They answer, first. That this Statute was made to exclude a foreign power, and therefore all that can be collected out of it is, that the Queen was above all foreigners, but not above the People and their Deputies in Parliament.

It is no matter wherefore the Statute was made, the Reply.
Queen.

The King's Supremacy Asserted.

Queen is there positively declared to be the onely supreme Governour of the Realm: the words of a Statute, whatsoever the end was, are always supposed to be true, and are pleadable in their usual and Grammatical sense to all purposes. But was the Oath framed onely to exclude a foreign power, are they sure of that? When God shall make inquisition for blood, and call the Reverend Divines, the fallen Answerer, the Treatiser, and the rest of their Complices to account for all the murders, oppressions, and injustice, whereof they have been the Authors and Abettors by stirring up the people to Rebellion, and teaching them lies, they will be found to have broken the oath of Allegiance; now his Majestie's rights have been invaded by the pretended Parliament, as well as if they had been invaded by a foreigner. For the Statute was made as well to declare who was the Supreme Governour of the Realm, as to declare who was not. The Pope challenged no Superiority over the Queen in Temporal matters, and yet in the Oath the Queen is acknowledged the supreme Governour of the Realm as well in Temporal as in Ecclesiastical causes: This had been very superfluous, if it had been composed and given onely to exclude the Pope; and was neither true nor a fit expression, if the two Houses had been coordinate with her: neither had they sufficiently excluded a foreign power by this Act, which, they say, was the onely end was aimed at: For the Pope claimed supreme jurisdiction over all in Ecclesiastical causes, as well over the two Houses as over the Queen; yet in this act provision is made for none but the Queen: by the title of the Statute all ancient jurisdictions are restored to the Crown; but there is no restoration of dignity or jurisdiction to the people or to their Substitutes in Parliament.

2. Answer.

Reply.

Secondly, they answer, *That the Queen is declared to be supreme in respect of particular persons, but not in respect of the people collectively taken, or their Substitutes in Parliament.*

The Queen is declared in the oath to be supreme Gover-

The King's Supremacy Asserted.

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near of the Realm, and the Realm includes the People collectively taken.

Besides, supremacy cannot admit of that distinction, for they that have any above them or coordinate with them are not supreme, although they be greater than any one in particular.

Thirdly they answer, *That the Queens Supremacy was to be understood, in curia non in camera in her Courts and not in her private capacity.* 3. Answer.

The Queen by communicating her authority to her courts did not part with it her self; Mr. Lambert in his Discourse upon the high Courts of Justice, almost at the end of his Book speaks punctuall to this exception, *They have I saith he run along our Courts of all kinds, and have said (as I was able) severally of these lay and mixed Courts of record deriving them from the Crown their Original, and drawing by one and one (as it were so many roses) from the garland of the Prince; leaving nevertheless the garland itself undispeited of that her sovereign vertue in the administration of justice: or as Bracton saith well; Rex habet ordinariam jurisdictionem. & omnia jura in manu sua, qua nec ha delegari possunt quin ordinaria remanent cum ipso Rege: And therefore whatsoever power is by him committed over unto other men, the same nevertheless remaineth still in himself in so much as he may take knowledge of all causes, unless they be felony, treason, or such other, wherein because he is a party, he cannot personally sit in judgment, but must perform it by his delegates. The King's authority then is as well in his person in regard of his private as in his Courts in regard of his politique capacity, and according to the Acts of Sovereignty and Majesty onely in his person; for a delegate power can not be Supreme; not but that it is the same authority whereby he acts himself in person, and his judges in his courts, but because it is not all the same authority, but restrained in his Judges by commission, writ, or law.*

In the first year of Edward the sixth an Act was made wherein the King is acknowledged to be the Supreme head

The King's Supremacy Asserted.

head of the Church and Realm, and that all power and authority was derived from him. Whereas the Archbishops and Bishops and other Spiritual persons in this Realm do use to
 1 E.6.cap.2. make and send out their summons, citations and other process in their own names in such form and manner as was used in the time of the usurped power of the Bishop of Rome, contrary to the form and order of the summons and process of the common law, used in this Realm. Seeing that all authority of Jurisdiction Spiritual and Temporal is derived and deduced from the King's Majesty as supreme head of these Churches and Realms of England and Ireland, and so justly acknowledged by the Clergy of the said Realm, and that all courts Ecclesiastical within the said two Realms be kept by no other power or authority either foreign or within the Realm but by the authority of his most excellent Majesty. Be it therefore further enacted, &c. Is it not evident from hence that the two Houses of Parliament are subordinate to the King and that they have their power by derivation from him, who is the fountain of all authority? These words shewing that all authority of jurisdiction Spiritual and Temporal is derived and deduced from the King's Majesty, as supreme head of these Churches and Realms of England and Ireland, do clearly intimate the two Houses to have no authority radically in themselves, and to be no way coordinate with the King's Majesty in the rights of Sovereignty.

For conclusion of this Chapter I will add one Act more made in the first year of King James, wherein the two Houses of Parliament collectively taken made an humble recognition of their faith and obedience to him. We your most humble and loyal Subjects the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, do from the bottom of our hearts yield to the Divine Majesty, all humble thanks and praises not only for the said inestimable benefits and blessings above mentioned, but also that he hath further enriched your highness with a most Royal progeny of most rare and excellent gifts and forwardness, and in his goodness is like to increase the happy number of them, and in most
 humble

humble and lowly manner do beseech your most excellent Majesty, that (as a memorial to all posterities amongst the records of your high court of Parliament for ever to endure of our loyalty, obedience and hearty and humble affection) it may be published and declared in this high court of Parliament, and enacted by authority of the same, that we (being bounden thereunto both by the laws of God and man) do recognize and acknowledge (and thereby express our unspeakable joys) that immediately upon the dissolution and decease of Elizabeth late Queen of England, the imperial crown of the Realm of England and of the Kingdomes, Dominions, and Rights belonging to the same, did by inherent birthright and lawfull and undoubted possession, descend and come to your most excellent Majesty, as being lawfully, justly and lawfully next and sole heir of the blood Royal of this Realm, as is aforesaid; and that by the goodness of almighty God, and lawfull rights of descent and due imperial crown, your Majesty is of the Kingdomes of England, Scotland, France and Ireland, the most potent and mighty King, and by God's goodness more able to protect and govern us your loving subjects in all peace and plenty than any of your noble Progenitors. And thereunto we most humbly and faithfully do submit and oblige our selves, our heirs and posterities, for ever until the last drop of our blood be spent; And do beseech your Majesty to accept the same as the first fruits of this high court of Parliament, of our loyalty and faith to your Majesty and your Royal progeny and posterity for ever. This is a far different strain from that which the present pretended Parliament have used to his Majesty, who although bound both by oath and duty to have been as respectful and obedient towards him, yet they have themselves after many insolencies committed against his person, most audaciously and unadvisedly taken away his life, and procured others by defamatory Libels to blast his credit, who according to the trust reposed in them, cease not to traduce him and by malicious aspersions to stain his chiefest virtues, creeping like Snails over the sweetest flowers, and leaving behind them their slime and filthiness.

C H A P. III.

*The King's Supremacy in particular shew'd by
the Statutes of the Land.*

THE King's supremacy in general being thus confirmed by several Acts of Parliament, I will now descend into particulars, and shew his Majesty to be legally invested with all the particular rights of Sovereignty. I will begin with the *Militia*, which is a right so essential to Majesty, that it can not, nor ought not to be separated from it: For Majesty consists not in a bare and empty title, but in the rights of sovereignty, which he cannot be said to possess, who wants the *Sword* to protect the *Sceptre*. It was confessed by the pretended Parliament at the beginning of these dissensions, that the *Militia* by right pertained to his Majesty, and therefore at the first they laboured to have it assigned to them by his own assent; but he opposing their unjust desires, as knowing both his own and the ruin of his posterity would be the necessary consequences of such a grant, they resolved seeing they could not gain it by surrender, to take it by assault, and assisted by men of like natures and inclinations, they seized upon his Majesty's Forts and Magazines, and have since exercised an arbitrary and tyrannical power over the lives and estates of all that pleased them not, and none could ever please them, but such as are of the same humour and disposition with themselves. I must confess I am amazed when I consider how confidently and desperately they have carried on their designs in a case so contrary to law and justice; for they could not have begun a war or contested with his Majesty about a matter more clear than that of the *Militia*, which is a right so inherent in the crown, settled upon it
by

by the fundamental Law of the Land, and confirmed by
so many several Acts of Parliament; that although the
pretended Parliamentarians have a great dexterity in
coynng distinctions to elude the laws, yet they will not
easily coyn such as shall serve their turn in this particular.
In the seventh year of Edward the first a Statute was made
to injoynt all men to go to Parliaments, Treaties and gene-
ral Assemblies without forces and arms, wherein the
Kings power over the Militia is acknowledged. The King
to the Justices of his bench sendeth greeting. Whereas of late
before certain persons deputed to treat upon sundry debates had
between us and certain great men of our Realm, amongst other
things it was accorded that in our next Parliament after provision
shall be made by us and the common assent of the Prelates, Earls,
and Barons, that in all Parliaments, Treaties, and other Assem-
blies, which should be made in the Realm of England for ever,
that every man shall come without all force and armour well and
peaceably to the honour of us, and the peace of us and our
Realm. And so it was enacted in our Parliament at Westminster
after the said Treatise, the Prelates, Earls, Barons, and the
Commonalty of our Realm there assembled to take advice of this
business, have said, that now it belongeth, and our part is through
our Royal seigniorie, straitly to defend force of armour, and all
other force against our peace at all times when it shall please us,
and to punish them which shall doe contrary, according to our
law and usages of our Realm, and hereunto they are bound to
aid us as their Sovereign Lord at all seasons when need shall be.
We command ye this ye cause the shewing to be read afore you in
the said bench and there to be inrolled. Given at Westminster
the thirteenth day of October. In another Statute made the
eleventh year of Henry the seventh, It is declared that all
subjects of the Realm, but especially those that have by the
King any dignities, gifts, offices, fees or annuities; are
bound to assist the King in his wars against all rebellions,
insurrections and powers raised against him. And by the
Parliament holden the fourth and fifth years of Queen
Mary an Act was made, wherein it was acknowledged
that

Coke lib. 7.
7. B.

that the Queen and her progenitors had power and authority to appoint commissioners to muster and array the people and subjects, and to levy such a number as they should think fit to serve them in their wars, and a remedy proposed against the abuses, that had formerly been committed by divers who absented themselves from such musters, and brought not their best furniture and array with them. I will omit the statutes made in the 14. Ed. 3. cap. 11. and the 1. E. 6. cap. 2. by which it appeareth, that the subjects of England are bound to go with the King in his wars as well within the Realm as without. I will also omit the act not printed made in the fifth year of Henry the fourth concerning the commission of array, as also divers other acts and statutes made to that effect and purpose, because so much hath been said about that subject already by his Majesty, in his answer to the declaration of both houses of Parliament concerning the commission of array.

Secondly the legislative power is another right of sovereignty, whereby Kings and supreme Magistrates are enabled by just and necessary laws to provide for the peace and safety of their people, and this wholly and intirely in the King, although he be limited in the exercise of his power so as he cannot make laws without the assent of the Lords and Commons assembled in Parliament. And this is that which the pretended house have stood so much upon: because the Kings of England desiring to rule their people by lenity, have out of princely clemency condescended so far as not to impose upon them (which they anciently did as I shall shew hereafter) any new law, or alter and repeal the old, without their own consent, they from the premises would make the people believe that their authority is equal to the Kings, and that themselves as their deputies are coordinate with him: and not content with the share which they unjustly challenged at first, they afterwards laid claim to all, wholly excluding the King and denying him his negative voice, usurping and taking upon themselves the whole power of making laws, whereas

whence they have no other interest or authority but what they derive from him: the Statutes declare this in express terms: for their ordinary style is, *The King doth will and command; and it is assented in the Parliament by the Prelates, Lords, and Commons.* Oath Sovereign Lord: the King by the assent of the Lords spiritual and Temporal and the Commons in this present Parliament hath ordained. And that the meaning and true intention of these expressions is such as I have said, will appear by the resolution of the Judges, of which I shall speak hereafter.

5 R.2.cap.2.

7H.4.cap.15.

22 E. 3.

Now that the King hath a negative voice in making laws, and that nothing can or ought to be esteemed an Act of Parliament without him, is evident by divers Statutes. In the first year of King James a Statute was made wherein the two Houses petitioning the King, that the recognition of their duty and obedience, as also of his Majesty's right unto the Crown of England, might be published in High Court of Parliament, to remain as a memorial to all posterity, conclude after this manner, *which if your Majesty shall be pleased (in enlargement of your gracious acceptance) to adorn with your Majesty's Royal assent, without which it can neither be complete and perfect, nor remain to all posterity according to our humble desire as a memorial of your Princely and acclamatory affection towards us; we shall and will also in the rest of your Majesty's unspeakable and inestimable honours.* But in the fifteenth year of Edward the third, a Statute was made on purpose to make void an Act whereunto the King had promised to set his Seal, and seemed to assent, (which by some for that reason was esteemed a Statute) because he had not actually assented and set to his Seal. Edward by the grace of God, Sec. to the Sheriff of Lincoln greeting, whereas at our Parliament summoned at Westminster in the 15 of Easter last past, certain Articles expressly contrary to the laws and customs of our Realm of England, and to our prerogatives and rights Royal were pretended to be granted by us by the manner of a Statute, we considering how but by the bond of our Oath we are bound to the observance and defense of such laws, cu-

stomer,

The King's Supremacy Asserted.

James, rights, and prerogatives; and providently willing to re-
 voke such things to their own state which be so improvidently
 done; upon conference & treatise thereupon had with the Earls,
 Barons, and other wise men of our said Realm, and because we
 never consented to the making of the Statute, but as then it be-
 haved us, we dissimuled in the premisses, by protestations of re-
 vocation of the said statute if indeed it should proceed to eschew
 the dangers which by the denying of the same, we feared to
 come, forasmuch as the said Parliament otherwise had been
 without dispatching any thing in discord dissolved, and so our
 earnest business had likely been ruinated, which God prohibite,
 and the said pretended statute we promised them to be sealed. It
 seemed to the Earls, Barons, and other wise men that substance
 the statute did not of our free will proceed, the same be void
 and ought not to have the name nor strength of a statute; and
 therefore by their counsell and assent we have decreed the said
 statute to be void, and the same inasmuch as it proceeded of
 need, we have agreed to be annulled; willing nevertheless that
 the articles contained in the said pretended statute, which
 by other of our statutes in of our progenitors Kings of
 England have been approved, shall according to the form
 of the said statute in every point, as convenient is, be observed;
 and the same we do onely to the conservation and reintegration
 of the rights of our crown, as we be bound, and not as we
 should in any wise grieve or oppress our subjects, whom we desire
 to rule by lenity and gentleness. And therefore we do command
 thee that all these things thou cause to be openly proclaimed in
 such places within thy Bailiwick where thou shalt see expedient;
 witnesse my self at Westminster the first day of October the
 fifteenth year of our reign.

Thirdly allegiance or ligeance is another right of So-
 veraignty due onely to Supreme Rulers and Governours;
 A coordinate Magistrate who hath but a parcel and share
 of authority, cannot alone challenge all obedience from
 the people, for all that are coordinate and have their shares
 in the rights of Sovereignty jointly taken together make
 up one supreme head, to whom onely allegiance or ligeance

is

is due. Now that allegiance or ligance is due to the King and onely to the King will appear by several Acts of Parliament. In the first year of King James, the Lords and Commons declared, that both the ancient and famous Realms of England and Scotland were united in allegiance and loyal subjection in his royal person, to his Majesty and his posterity for ever; In 34 H. 8. cap. 1. and 35 H. 8. cap. 5, &c. the King is called the liege Lord of his subjects: and in the Acts of Parliament of 13 R. 2. cap. 5. and 11 R. 2. cap. 1. 14 H. 8. cap. 2, &c. subjects are called the King's liege people. By other Acts of Parliament divers oaths have been framed and given to the people, the contents and effects whereof were, that they should bear all faith and allegiance to the King and his heirs. In the six and twentieth year of Henry the eighth an oath was taken by all the King's subjects for the surety of the succession of the crown of England, the oath was this: *Ie shall swear* 26 H. 8. c. 2.
to bear faith, truth and obedience all ongly to the King's Majesty and to the heirs of his body of his most dear and intirely beloved lawfull wife Queen Anne begotten and to be begotten; and further to the heirs of our said Sovereign Lord according to the limitation in the statute made for surety of his succession in the Crown of this Realm mentioned and contained, and not to any other within this Realm, nor foreign authority, or potentate and in case any oath be made, or hath been made by you to any person, or persons, that then ye repute the same as vain, and unprofitable, and that to your cunning, wit, and utmost of your power, without guile, fraud, or other undue mean, ye shall observe, keep, maintain and defend the said act of succession and all the whole effects and contents thereof and all other acts and statutes made in confirmation, or for execution of the same or for any thing therein contained. And this ye shall doe against all manner of persons, of what estate, dignity, degree, or condition soever they be. And in no wise doe or attempt, nor to your power suffer to be done or attempted, directly or indirectly any thing or things, privately or apparently, by violence, damage, by derogation thereof, or of any part of the

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some, by any manner of means or of any manner of pretence; so help you God, and all Saints, and the holy Evangelists. There are two things observable in this oath, first, that they swear *inclusive* to bear all faith, truth and obedience, to the King's Majesty and his heirs, and onely to them; Secondly that they swear *exclusive* to bear faith, truth and obedience, to no other ruler within the Realm or without, not to other persons, nor to other authority, by both which clauses of the oath it appears, that the King, and none but the King, can challenge faith and allegiance from the people. Afterwards in the eight and twentieth year of King Henry the eighth the like oath was enjoined to be taken by all his subjects touching his succession by Queen Jane, for the former Act touching his succession by Queen Anne was repealed, but the oath enjoined was otherwise the same; And in the five and thirtieth year of his reign another oath was framed, wherein, besides the contents of the former touching allegiance due to the King and his heirs; some other additions were inserted touching his Supremacy in Ecclesiastical causes: because the former oaths were not thought full enough to that effect and purpose; And these oaths were extraordinary and imposed by special appointment: But besides these there is another ordinary oath of Allegiance which was first instituted by King Arthur, and is mentioned amongst the laws of King Edward, and confirmed by the laws of William the Conquerour; this oath continueth still in force and should by the Law be given in every Leet. The order and form of it appeareth in Britton who wrote in the reign of Edward the first, and compiled a book of the Statutes and Laws which were then in use; the effect of it is this: *You shall swear that, from this day forward you shall be true and faithfull to our sovereign Lord the King and his heirs, and truth and faith shall bear of life and member and terrene honour and you shall neither know nor bear of any ill or damage intended unto him, that you shall not defend so help you almighty God.* By this it is clear enough that allegiance is due to the

28 H. 8. c. 7.

l. 35.

l. 59.

Coke lib. 7. in
Calvins case.

the King: the pretended house on the other side is so far from having authority to exact allegiance from the people, that they were all bound themselves by law to take the oath of Allegiance before they were admitted to sit in the house: and having every one taken the said oath how they should be absolved, none but themselves can understand, whose common practice hath been to play with oaths as children play with toys and trifles, seeming rather to make them their pastime, than to esteem them religious acts, or sacred obligations.

Fourthly to pardon the transgression of the laws, to remit treason, murder, felony, man-slaughter, to appoint subordinate Judges; to make leagues with foreign Princes and States, all these are rights of Sovereignty, and all these are declared and determined by the Statutes of the land to belong to the King's Majesty. First the power of pardoning the transgressions of the Law, and of remitting treason, murder, felony, manslaughter, and such like offences is declared and determined to be in the King's Majesty by a Statute made in the twenty seventh year of Henry the eighth.

Where divers of the most ancient prerogatives and authorities of Justice appertaining to the imperial Crown of this Realm have been severed and taken from the same by sundry gifts of the King's most noble progenitor, King of this Realm, to the great diminution and detriment of the Royal estate of the same, and to the hindrance and great delay of justice, for reformation whereof be it enacted by authority of this present Parliament, that no person or persons of what estate or degree soever they be of, from the first day of July which shall be in the year of our Lord God 1536: shall have any power or authority to pardon or remit any treason, murder, manslaughter, or felonies, or any malices for any such offences aforesaid committed, perpetrated done or divulged, or hereafter be committed done or divulged by or against any person or persons in any part of this Realm, Wales, or the marches of the same; but that the King's highness his heirs and successors Kings of this Realm shall have the whole and sole power and authority thereof united and unite

27 H.8. cap. 4.

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to the imperial crown of this realm, as of good right and equity it appertaineth, any grants, usages, prescription, act or acts of Parliament, or any other thing to the contrary hereof notwithstanding. Secondly the power of appointing subordinate judges is declared and determined to be in the King by the same Statute. And he is also enabled by authority aforesaid that no person or persons of what estate, degree, or condition soever they be, from the said first day of July shall have any power or authority to make any justices of Eire, justices of Assize, justices of peace or justices of Gaol delivery: but that all such Officers and Ministers shall be made by Letters Patents under the King's great Seal, in the name and by authority of the King's highness and his Heirs Kings of this Realm, in all Shires, Counties, Counties Palatine, and other places of this Realm, Wales and the marches of the same, or in any other his Dominions, at their pleasure and will in such manner and form as justices of Eire, justices of Assize, and justices of Peace, and justices of Gaol delivery be commonly made in every shire of this Realm, any grants, usages, prescription, allowance, act or acts of Parliament, or any other thing or things, to the contrary thereof notwithstanding. Thirdly the power of making leagues with foreign Princes and States is declared to be in the King, by a Statute made in the fourteenth year of Edward the fourth, which begins thus: *Whereas divers and great offences and attempts have now of late been done and committed against the amities and leagues made betwixt our said Sovereign Lord the King and strange Princes.* By this beginning of the Statute it is manifest that the power of making leagues and contracting alliance with foreign estates is a right belonging only to the Crown. I could yet add divers other acts of Parliament to confirm this and all the other particulars above named, but I suppose these which are already alleged are more than sufficient; there are also other rights of Sovereignty which I could shew by the Statutes to be in the King, but because there is no contestation about them, I will not fight with a shadow; those above mentioned are the chiefest and inseparable from Majesty.

CHAP. IV.

*The King's Supremacy in general shewed
by the Common Law.*

HAVING shewed the King's Supremacy from the Statutes, I come now to the Common Law, which is the ground and foundation of it: for Statutes are but declarations of the royal power, the power is self with the several modifications and qualifications of it is more ancient than any Statute, and cannot be limited or restrained by an Act of Parliament in any thing that tends to the derogation or diminution of Majesty: for the English Monarchy by the Common Law is an absolute Monarchy, susceptible of no alteration in the rights and pre-eminences of Majesty.

First I say the English Monarchy is an absolute Monarchy by the Common Law admitting no mixture in the rights of Sovereignty, the King alone being the only supreme head and governor, having none superior to him or co-equal with him, either singly or collectively taken, this is expressly determined in Sir Edward Coke's Report of the 12th of the 1st year of the late Queen had never been made, & was believed by all the Judges that the King in Queen of England for the time being may make such an Ecclesiastical Commission as is before mentioned by the ancient prerogative and Law of England. And therefore by the ancient Laws of the Realm the Kingdom of England is an absolute Empire and Monarchy consisting of one head which is the King and a free body Politick compact and compounded of many and diverse persons several and yet agreeing members, all which the Law divideth into two general parts that is to say the Clergy, and the Laity, both of them are and immediately under God subject and obedient unto the head, also the King head of this Politick body is intitled and furnished with power and

Coke lib. 5 in
Caudrey's
Case.

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entire

tute is made for the publick good and the liking of the head of the Common wealth and the fountain of justice and mercy) is by all the Realm trusted with that confidence and trust is so inseparably annexed to the Royal person of the King in so high a point of Sovereignty that he cannot transfer it to the disposition or power of a private person or to any private use. I shall not need to explain and amplify the matter by arguments and Inferences drawn from these reports for the words are clear of themselves, and do expressly declare and resolve the Monarchy of England to be an absolute Monarchy, the King alone to be the only supreme head and Governour of the whole body, that is, of all the people, as well collectively as severally taken.

And hence it is, (namely in regard of the King's Supremacy he being the only head of the Kingdome, having no equal or Superiour but God alone, whose Vicegerent he is upon earth) that the Common law doth by way of fiction and similitude attribute unto him the Divine perfections. Finch lib. 2. de l. ley. bap. 1. *Roy est le chef del bien publick, immediat desoubz Dieu, desuis tous persans & en toutes causes: Et par ceo entent que il resemble le persan del Dieu, & port son image entre toutes les personnes en lui: et un similitudinaire au Dieu, & entre les excellencies qui sont au Dieu, est: Quant SOVERAIGNETEE, tout vray est, & appartient de lui: nul action n'est veue lui qui soit commander le Roy & POYAR, il peut commander ses subjets d'alez hors de Roialme en guerre: peut faire ordonnez foreins, mine, curront icy par ses Proclamations. MAJESTEE, ne peut prendre ny departir ouz ordonnez chose forsque par maniere de conseil: ne fait chose ou tel quia de minimis non curat lex. INFINITIENES est un mannet, estant present en tous les doctes si come homme peut dire en chescun lieu. PERPETUITEE ayant perpetual succession, & ne enque mor. PERFECTIEN, ne nul lachet, folle, infante, ou corruption del sang est judge en lui. VERITE, ne ferra un que estappe. JUSTICE, ne peut estre disservies faire a aucun tort, & est.*

R. H. 7. 10.

7 E. 4. 17.

21 H. 7. 2.

Coke 7. f. 7. B.

43 El. Coke

3. fol. 114. B.

4 E. 6. 31.

5 E. 4. 7. 1

2 H. 4. 7. 35

7 H. 7. 19.

35 H. 6. 26.

10 El. 3. 31.

35 H. 6. 61.

4 El. 2. 46.

under

under God, over all persons, and in all causes; and therefore because he represents the person of God; and bears his image, the law attributeth unto him in a similitudinary manner a shadow of Divine excellencies; namely **SOVERAIGNTY**, all lands are holden of him; no action lyeth against him; for who shall command the King? **POWER**, he may command his Subjects to go out of the Realm to War. He may make any foreign coin current here by his Proclamations; **MAJESTY**, he can neither take nor part with any thing without matter of Record except it be chattel or such like, because the Law regards not such small matters. **INFINITENESS** after a Manner, being present in all his courts, and as it were in all places. **PERPETUITIE**, having perpetual succession, and being not subject to dye; **PERFECTION**, for no laches, folly, Infancy, or corruption of blood can be judged in him; **TRUTH**, he cannot be esopped; **JUSTICE**, he cannot be a dissolutor or doe any wrong.

There are also divers prerogatives and privileges by the Common law belonging to the King; and divers Acts which the King may doe, or not doe, by reason of his Supremacy. The King shall not in his writ give any man the style or title of *Dominus* because it is unbecoming his Majesty to use that term to any, he being himself *omnium Subditorum supremus Dominus*, the supreme and soveraign Lord of all his subjects; and in this case although there be variance between the Writ and Obligation, or other specialty, yet the Writ shall not abate, which it shall in other cases, as if they vary in the name, or surname, or if they vary in the sum.

8 E. 6. 23. B.

11 E. 4. 2.

8 E. 4. 2.

At. p. 118.

Elizab. 498.

The King can hold land of no man, because he can have no superiour, but on the other side all lands either immediately or mediately are holden of him as Soveraign Lord; for although a man hath a perpetual right in his estate, yet he hath it in the name of a fee; and whether it cometh to him by descent, or purchase, he oweth a

sent or duty for it: and therefore when in pleading a man would signify himself to have the greatest right in his estate, he saith, *Que il est on suit seise de ceo en son demesne come de fee*, that he is or was seised thereof in his demesne as of fee, and if a man holds his estate immediately of the King, as of his Crown or person, this tenure is called a tenure *in capite*, because he holds it of the supreme Head of the Common-wealth.

Littleton f. 3.

If a man holdeth land both of the King and other inferior Lords whereby his heir becometh a Ward, the King alone shall have the custody both of the heir and land, the reason which is rendered in law is because the King can have none coordinate with him, or superior to him. Glanvil. lib. 7. cap. 10. *Si quis in Capite de Domino Rege tenere debet, tunc ejus custodia ad Dominum Regem plena pertinet: si vero alius Dominus habere debeat ipse heres, si non, quia Dominus Rex nullum habere potest parem, multo minus superiorem: & cum quis manum holdeth land of our Lord the King in capite, when his wardship shall wholly belong to our Lord the King whether he hath other Lords or not, because the King can have no equal, much less a superior. Braddon, lib. 2. cap. 37. *Si aliquis baron terram aliquam tenuerit de Domino Rege in Capite, si vero alius Dominus habuerit, si non, Dominus Rex illis prefertur in custodia hereditatis, & si ipse baron ab alio pateris fuerit seofatus, si postea, cum Rex potem non habeat nec superiorem in regno suo, i. e.* If an heir holdeth land of our Lord the King whether he hath other Lords or not, our Lord the King shall have the wardship of the Heir, whether the heir were first or last infeoffed by others; because the King hath no equal or superior in his Kingdom. The law is the same as well for whole Societies, Incorporated, and collective bodies, as for Particular men: if a man should make the two houses his heir leaving them lands holden of them by Knights service; if the same persons held also of the King in capite by Knights service, the King alone should have the wardship and custody of the heir and land, though*

first, inforced by the others; and the reason in law of this prelation is, saith Bracton and Glanvil, because the King hath neither equal nor Superior.

21 H. 7. 2.

Stanford in
his exposition
of the
King's Pre-
rogative.
c. 22.

By the common law there lieth no action or writ against the King, but in case he seiseth his subjects lands, or taketh away their goods, having no title or order of law, petition is all the remedy the subject hath, and this petition is called a petition of right: The reason which is given in law for this is because the King is supreme and accountable to none but God. Bracton lib. 1. cap. 1. *Non debet esse major eo, (i. e. Rege) in regna sua in exhibitione juris, minor autem esse debet vel quasi in iudicio suscipiendo si poterit. Si autem ab eo petatur. Eum breve non curat contra ipsum. Locum tunc supplicationi quod factum suum corrigat et emendat, quod quidem si non fecerit, satis sufficit ei ad penam quod Dominum expetiet ultorem. Nemo quidem de factis suis presumat disputare, multo fortius contra factum suum venire.* i. e. b. There ought not to be in his Kingdom a greater than he (that is, than the King) in the exhibition of law, but he ought to be the least, or as it were the least in receiving judgment if he desire it: But if it be desired of him (because no writ lyeth against him) there shall be place for petition that he would correct and amend his deed, which if he refuse to do, it is sufficient for his punishment that he may expect God a revenger, for no man must presume to dispute of his fact, much less oppose and resist it. And again, lib. 4. cap. 10. *Item inter cetera videndum est quis sit ille qui debeat. Princeps, scilicet ex potentia, vel aliquis pro eo, vel Iudex qui male iudicaverit, vel privatus persona. Si autem Princeps, vel Rex, vel alius qui superiorem non habuerit nisi Dominum, contra ipsum non habebitur remedium per officium, immo tantum locus eius supplicationi ut factum suum corrigat et emendat, quod si non fecerit, sufficit ei pro pena quod Dominum expetiet ultorem.* i. e. It is also to be considered who it is that disceiseth, whether the King by his power, or some other in his name, or a Judge who judgeth unjustly, or a private person. If it be the King, or

any

any other, who hath no superiour but God: there shall be no remedy had against him, by assise, or else there shall be place for petition, that he would correct and amend his deed, which if he refuseth to doe, it is sufficient for his punishment, that he may expect God a revenger. This is all the help which a subject hath against the King, because he is supreme, and bound to give an account of his actions to none but God, and this is the course which the two houses of Parliament are to take by law in case the King infringeth or is supposed to infringe the rights and liberties of the people, as will appear by divers petitions of right exhibited in former Parliaments.

Secondly I say, the English Monarchy by the common law is susceptible of no alteration in the rights and pre-eminences of Majesty, I mean by any Act of Parliament, or by any agreement of King and people: what a conqueror in a just war, or what the people may doe in case the blood Royal, which God prohibit, should be extinct, is not now disputable: but so long as there remains a King, or heir apparent to the Crown, the rights and pre-eminences of Majesty can by no act, agreement, stipulation or covenant made between King and people be severed and taken from the Crown: should the King unwarily by act of Parliament consent to any thing prejudicial and derogatory to his Royal prerogative, such Acts are void by the common law, and the Judges (being bound by oath to assent to nothing that may turn to the King's hinderance or damage) are bound to declare them so, and have done it *de facto* upon several occasions. By a Statute made in the twenty third year of Henry the sixth it is ordained that no man shall continue Sheriff of a Shire above one year, and that all patents from the King of that office, for term of years, of life, in fee simple, or in fee tail should be void, any clause or word of *non obstante* in any wife put or to be put into such patents to be made notwithstanding: now this Statute so far as it strikes at the King's prerogative is by the Judges of the

23 H. 6. c. 8.

2 H. 7. Coke
lib. 7. fol. 14.

11 H. 7. 11. B.

land declared to be void, contrary to the expresse purview of that Act, and all Kings since might with a clause of *non obstante* against the manifest sence and words of that Statute have granted that office for life in rail, or in fee. *Etich.* lib. 2. fol. 22. Roy peut licencier choses prohibées par statute, come a coynier argent que est fait selonc un estatute, & devant ces faits loyall a faire, car ceo est forsque malum prohibitum: mes malum in se, come a levier un nuisance en le haut chemin; Roy ne peut licence home a faire, mes apres que est fait il peut ceo pardonner. Mes si le statute dit, que son licence sera void, la le licence liorr' au clause de non obstante, cest assavoir, dire non obstante aucune estatute al contrarie, ou autrement n'est bon; come la Statute 33 H. 6. cap. 18. est, que grant del Roy destle vicount del aucun countie plus longement quam per un an sera void: nient obstant que son patent aver un clause de non obstante: nuncore ave un clause de non obstante, nient potent sera bon. i. e. The King may license things prohibited by Statute, as to coyn silver, which is made felonie by Statute, but was lawfull before, for that is evil onely because it is forbidden, but that which is evil in it self as to levy a nuisance in the high way, the King cannot license a man to do that, but he may pardon it after it be done. But if the Statute say his licence shall be void, there the licence shall have a clause of *non obstante*, viz. it shall say any Statute to the contrary notwithstanding, or otherwise it is not good: As the Statute 23 H. 6. c. 18. is that the grant of the King to be Sheriff of a Shire longer than a year, shall be void, notwithstanding his patent shall have a clause of *non obstante*, and yet with a clause of *non obstante* such a patent shall be good. So likewise the King hath a power to dispense with penal Statutes, and if such dispensations should be prohibited or made void by Act of Parliament, yet with a clause of *non obstante*, they shall be good, although it should be provided in expresse terms that such dispensations notwithstanding the said clause should be of none effect. By divers Statutes it hath been enacted, that no charter of pardon of the death of a man nor of

Coke l. 7. 37.

2 E. 3. cap. 2.

4 E. 3. cap. 2.

14 E. 3. c. 14.

other

other felony should be granted; yet all these Statutes are by the common law made void, because they cut off part of the Kings prerogative. So likewise to grant letters patents of Denization is esteemed by the common law *inter jura Majestatis & insignia summa potestatis*, and is so inseparably and individually annexed to the Royal person of the King as it cannot be divided from it. That which I have hitherto said of the rights and preeminences of Majesty, is to be understood of those rights and preeminences that are so essential to it, as they cannot be separated without the diminution or destruction of Majesty. As the power of the *Militia*, the power of making Laws; the power of appointing Judges, and such like acts of jurisdiction, as also the power of dispensing with penal Statutes, the power of pardoning the transgressions of the law, the power of prosecuting the law, and such like supreme acts of justice and mercy: some of which rights and preeminences cannot be taken away without giving a wound, others not without bringing death and dissolution to Majesty: yet there are other rights and preeminences that are called privileges which are not so essential to Majesty, but that they may by special grace of the King be separated. *Bracton lib. 2. cap. 24. Ea vero que jurisdictionis sunt & pacis & ea que sunt justitie & paci annexa ad nullum pertinent nisi ad Coronam & dignitatem Regiam, nec a Corona separari poterunt cum faciant ipsam Coronam. Ea vero qui dicuntur Privilegia, licet pertineant ad Coronam, tamen a Corona separari possunt & ad privatas personas transferri, sed de gratia ipsius Regis speciali. id est.* Those things which belong to jurisdiction and peace: and those which are annexed to justice and peace pertain to none but the Crown; neither can they be separated from it because they make the Crown. But those which are called Privileges, although they pertain to the Crown, yet they may be separated from it and transferred to private persons, but not without the special favour of the King.

It

It may seem strange that the King and the Lords Spiritual and Temporal, and the House of Commons, which are virtually the whole Kingdome, should not have power to make what Laws they please, and to bind themselves and the whole Kingdome by them in things not repugnant to the law of God: yet if we consider the ground of this restraint, we shall find it reasonable: for they which lay the first foundation of a Common-wealth, have authority to make laws that cannot be altered by posterity in matters that concern the rights both of King and people: for foundations cannot be removed without the ruin and subversion of the whole building: As for example, the division of things which is made at the first foundation of a Common-wealth (whether the people took the country they divide from the inhabitants by conquest in a just war, or whether they did first actually possess it themselves as being before empty and vacant) cannot be altered by posterity, and a new division made without manifest injustice. The Laws which they then make for the preservation of their right and propriety in the said division, can not be disannulled by succeeding Parliaments, nor can any particular man be deprived of his inheritance, which descends unto him by virtue of that division, or of any part or parcel, or appurtenances thereof, by any contrary-law which shall be made by them; I speak not what Parliaments may doe by force, but what they may justly doe; for they have not such an arbitrary power, but that they are always in a moral subjection to the rules of justice and natural equity. And in this case the King's condition ought not to be worse than the peoples, but his share and rights in the said division are as firmly and unchangeably to be preserved, as the share and rights of particular men: And both the King and people are obliged to this not onely by the rules of Justice, and natural equity, but by oath, and by the municipal Laws of the Land, to which they are both sworn. That the King is bound to this

this, appears by the Laws of King Edward. *Debet vero de jure Rex omnes terras, & honores, omnes dignitates, & jura, & libertates corona regni hujus in integrum cum omni integritate & sine diminutione observare & defendere; dispersa & dilapidata & amissa regni jura in pristinum statum & debitum viribus omnibus revocare. i. e.* The King ought by right to maintain and defend all the lands, honours, dignities, rights and liberties of the Crown, entirely without diminution: and by all means to recall again those rights which are lost and separated from the Crown. That the people are bound to this, appears likewise by the Laws of King Edward, and of William the Conquerour, who did a little enlarge the Laws of King Edward in this particular. *Statuimus etiam & firmiter precipimus ut omnes liberi homines totius Regni nostri predicti sint fratres conjurati, ad Monarchiam & ad Regnum nostrum pro viribus suis & facultatibus contra inimicos pro posse suo defendendum, & viriliter servandum, & pacem & dignitatem coronæ nostræ integram observandam, & ad judicium rectum & justitiam constanter omnibus modis pro posse suo sine dilatione faciendam. Hoc decretum sanctum est in Civitate London, i. e. we will and command that all free men of our Kingdome be sworn Brothers to defend and keep our Monarchy and Kingdome according to their power against the enemies of the same, and to maintain the peace and dignity of our Crown entire, and to exercise right judgement, and justice according to their power without deceit and delay. This Decree was enacted in the City of London. By the civil law also the rights of Sovereignty cannot be separated from the Prince, and the reason alleadged is, because they are essential to Majesty. *Suprema jurisdictio & potestas regia, etsi Princeps velit, se separari non possunt, sunt enim ipsa forma & substantialiter essentia Majestatis, ergo manente ipso Rege ab eo abdicari non possunt. Cabelo pract. observ. par. 2. decis. 40. n. 8. Io. Andr. in addit. ad specul. tit. de jurisdict. c. Cum Maribz. & celebrat. Adissor. i. e.* Supreme jurisdiction and Kingly power cannot be separated from the Prince although he would himself,*

l. 35.
l. 36.

himself, for they are essential to Majesty, and cannot be abdicated whilst he remaineth King.

C H A P. V.

*The King's Supremacy in particular shewed
by the Common Law.*

19 E. 4.
6 Coke 7.
25. B.

I Come now to the particular rights of Sovereignty, which are all by the Common Law wholly in the power of the King. First, the *Militia* is his by the Common Law, and to him it onely pertaineth, to make War with foreign Princes and Estates; as also to maintain the Peace, to suppress Rebellions, and to see Justice executed at home within his own Kingdome: *Fleta*, lib. 1. cap. 17. *Habet Rex in manu sua omnia jura quæ ad Coronam & Castellum pertinent potestatem & materiale gladium qui pertinet ad Regni gubernaculum. i. e.* The King hath all the rights in his hand which belong to the Crown, and to Temporal jurisdiction, and the power of the sword, which belong to the Government of the Kingdome. So likewise saith *Bracton*, lib. 1. cap. 8. *Sunt & alii Potentes sub Rege qui dicuntur Barones; hoc est robur belli, sunt & alii qui dicuntur Vassallos; viri magnæ dignitatis, Vassallos enim nihil melius deo poterit quam vos fortium ad valetudinem. Sunt & sub Rege milites s. ad militiam exercendam electi. i. e.* There are other great men under the King which are called Barons, and other which are called Vassalours, men of great dignity. There are also soldiers under the King chosen to exercise the *Militia*. And in the beginning of his Book he saith that it is necessary this power should be in the King. *In Rege qui velle regit, necessarij sunt duo hæc, Arma videlicet & Leges; quibus utrumque tempus bellorum & pacis recte possit gubernari: utrumque enim horum alterius indiget auxilio, quo tam res militaris possit effecta sua, quem ipse Leges usu armorum & pra-*
sidio

fidelis possit esse servus. Et contra omnes defensionis, contra hostes,
rebelles, & indomitos sic vis regis in defensionem suam. Et contra
reges, sic determinabiliter iustitia. i. e. In a King the governeth
well, two things are necessary, arms and laws, by
which he may be enabled to rule both in times of peace
and war; and both these help the other, and oblige another,
whereby both arms and laws may be preserved. If arms
be wanting against enemies, and rebels, the Kingdome
shall be without defence; if laws be wanting, without
justice. This is also evident from the Tenures, whereby
most of the chief men in the Kingdome hold their estates:
for all that hold in capite by Knights, Knights are bound
for their fee to assist the King in his wars, whensoever they
shall be summoned by him, whether it be in support of
bellion, or to resist a foreign invasion. And this hath
been the known Law of this Land ever since the time of
William the Conquerour, in the fourth year of whose
reign this right was confirmed unto him by act of Parli-
*ament. The words of the Statute are these, *Statutum est*
firmiter precipimus, ut totius Comitatus, & Baronum, & Mil-
litum, & Servientium, & universi liberi homines totius regni
nostri predicti habeant & teneant se semper bene in armis, & in
equis ut debet & oportet, & quod sint semper prompti & parati
ad servitiu[m] suu[m] in regem, subiectionem & p[er]agendum,
cum semper oportet ad facere, secundum quod debent de feodo
& tenementis suis de jure facere, & sicut illis statum[m] per com-
mune consilium totius Regni nostri predicti, & illis dedimus,
& concessimus in feodo jure hereditario. i. e. We will and com-
mand that all Earls, Barons, Knights, Villeins, and all
freemen of our whole Kingdome, be always well pro-
vided with horse and arms as it behooveth them, and
that they be always in readiness to serve us as often as
need shall require according as they are bound by their
Lands and Tenements; and as we have appointed them to
do hereby the Common Council of our whole Kingdome,
and for this consideration have given and granted them lands
*in fee for such our well deserved reward and to us and**

The King's Supremacy Asserted.

Secondly, The Legislative power belongs to the King alone by the Common Law, the two Houses have authority granted them by the King to assent or dissent, but the power that makes it a law, the authority that animates it and makes it differ from a dead Letter, is in the King, whose is the life and soul of the law, by whose authority allows the laws command, and forbid, and vindicate, and punish offenders. So saith Bracton lib. 1. cap. 2. *Regis est dignitas leges Anglica, & consuetudines Regum ordinantur juxta quodcumque, quandoque visum, & quandoque vindictam in puniunt transgressores. i. r. n.* These laws and business of Kingdom by the Kings authority do sometimes restrain, sometimes subsid, and sometimes chastise and punish transgressors. This was also resolved by divers Barons and Bishops, and by all the justices in the time of Edward the third. For one Hadow and his wife having a controversy with the King, and desiring to have it decided in Parliament, a sentence being made in divers Barons and Bishops, and so all the justices to consider of the business, it was resolved that the two houses were not coordinate with the King in the Legislative power, but that the King alone made laws by the assent of the two houses, that he had none equal or coordinate with him in his Realm, and that he could not be judged by the Parliament. *Et ad id quod de Regis legibus per assensum parit et de la Commune. Et que le Roy per sonne ne doit estre jugé. i. r. n.* It was resolved that the King makes laws by the assent of the Lords and Commons, and not the Lords and Commons, and that he could have no Peers in his own land, and that he could not be judged by them.

25. The Common practice of the law confirms this as well as the resolution of the Judges: for the breach of any Statute whether it be by treason, murder, felony, perjury, or by any other way, is an offence against the King's authority alone, and pleas made against such offences are called the pleas of the Crown, because they are done *contra*

22 E. 3. 6.

The King's Supremacy Asserted.

35

la couronne & dignité de Roy, against the Crown and dignity of the King. So that it is not the dignity and authority of the Lords and Commons which is violated by contempt of the law, but the dignity and authority of the King.

Stanford les
pieces del.
corone lib. 1.
cap. 1.

He may dispense also with such laws as forbid anything which is not *malum in se*; and pardon the transgression of others, as Treason, Felony, and the like; which in reason he ought no more to do, than to dispense with the laws of Germany, Spain or France, or pardon the transgressors thereof, if they were not made by his own authority.

Again it is an uncontrollable Maxim of Law: *Ejusdem est leges interpretari jus est iudicis*: None can interpret the laws, but the same power that makes them. Now that the King calling the Judges to him hath this power, is evident by his exposition upon the Statute of Gloucester made in the sixth year of Edward the first, extant amongst the printed Statutes; and following immediately after the said Statute, in these words: *After by the King and his Justices certain explications were made upon some of the articles above mentioned, that is to wit, to the first article, for entries by disseisin, damages shall run from the time of the Statute published. In the same wise, in writs of entry upon disseisin in all writs of Mortmain, Curtesy, Aiel or Belief, if intrusion by one will by any manner of writ, damages shall run after the writ purchased against whom then held by Statute, albeit their ancestors died seized thereof, &c.* Here we see to whom the interpretation of the law belongeth, the Judges by themselves have a power to interpret *le judiciaire*, they could not otherwise proceed to judgement, but being called by the King, with him, and under him, they have a power to interpret it *arbitraire* as hath been the practice, and is the known law of the Land. But for the two houses (besides that they can do nothing jointly together, unless the King doth actually concur with them) their structure is such that they are altogether incapable and unable to interpret law. For the power that in-

101. v. H. 1.
101. v. H. 2.
101. v. H. 3.
101. v. H. 4.
101. v. H. 5.

12 H. 7. 10.
4 H. 7. 18.
7 H. 14.
Judge Jen-
kins, fol. 18.

repairs law must be always existent, so that as new occasions shall arise, which requires the exercise of that power, which the two houses are not. And yet were they always existent, both houses having a negative voice, upon any disagreement between them, the interpretation of the law must be retarded, and all controversies depending thereupon undecided, and this disagreement might perhaps endure for ever, and so a final determination in such suites would be impossible. Now these are inconveniences which ought not to be admitted in any commonwealth: for it derogates both from the honour and wisdom of a Nation to be so moulded and framed, that justice cannot have a free passage in all contingencies.

I will yet add for the further clearing of this point, that not only the legislative power it self, but the very exercise of the power also, so far as it is essential to government is in the King alone; for he can by edicts and proclamations provide for all necessary occasions, and special emergencies not provided for by fixed and certain laws; which is one of the most excellent and eminent acts of the legislative power, and a sufficient remedy against all mischiefs, in case the two houses should refuse to concur with him in those things which concern the benefit of the Kingdome. He may also grant immunities, liberties and privileges, to any college, town, city or incorporation, and authorise the said communities to make such local Statutes as shall oblige every member thereof so far as they contradict not the general Statutes of the Land, which are all acts of the legislative power that he can exercise without the concurrence of the two houses.

Now concerning the King's negative voice, it is the known law that the King hath a power of dissenting, and that no act of Parliament can have any authority except either in person or under his seal he signifies his assent.

Thirdly, allegiance or ligancy is due to the King, and none but the King by the Common law, as Sir Edward Coke sheweth at large in *Calvin's* case from the resolution

of the Judges. By this which hath been said appeareth, saith he, that this ligeance is due only to the King so as therein the question is not now called *quomodo debetur*. It is true that the King hath two capacities in him, one a natural body being descended of the blood Royal of the Realm, and this body is of the creation of almighty God, and is subject to death, infirmity, and such like. The other is a politick body or capacity, so called because it is framed by the policy of man (and in the 21 E. 4. 39. B. is called a mystical body) and in this capacity the King is esteemed to be immortal, invisible, not subject to death, infirmity, infancy, nonage, &c. Vide Pl. Com. in le Case de Seigneur Barley 238. Et in the case del duche 213. vide 6 E. 3. 291. & 26. ass. pl. 54. Now seeing the King hath but one person and several capacities, and one politick capacity for the Realm of England, and another for the Realm of Scotland, it is necessary to be considered to which capacity ligeance is due, and it was resolved that it was due to the natural person of the King, which is ever accompanied with the politick capacity and the politick capacity as it were appropriated to the natural capacity and is not due to the politick capacity only; that is to the crown or Kingdome distinct from his natural capacity. In the same case a little after it followeth. And where divers books and Acts of Parliaments speak of the ligeance of England to the 31 E. 3. in *Chynage* 5. 42 E. 3. 13 E. 3. in Br. 677. 25 E. 3. Statut 2. De iudicis ultra mare. All these and divers others speaking briefly in a vulgar manner (for loquendum ut vulgus) and not pleading (for sentiendum ut docti) are to be understood of the ligeance due by the people to the King. For no man will affirm that England is self taking is for the continent thereof; doth owe any ligeance or faith, or that any ligeance or faith should be due to it; but it manifestly appeareth, that the ligeance or faith of the subject is propriam quarto modo to the King, omni, soli & semper.

Fourthly, the power of making Judges, and all such State officers as exercise any jurisdiction is in the King alone by the Common law; and can not, nor ought not to be separated from him: for it is not reasonable that de-
legate

legate Judges should be substituted by any but those whose delegates they are; nor can a King execute Justice according to his oath (which next the Glory of God is the chief end of Government) by a naked title only: His Subjects may be vexed by the rapine and exactions of unjust Judges; they may be wearied by delays, exhausted by insupportable fees, oppress many several ways; and the King in the mean time must stand still and look on, if his hands be bound, and he disabled from punishing their delinquencies & deposing others into their places. And therefore this power cannot be disunited from the Crown; but ought to be *de jure*, as it hath alwayes been *de facto*, a part of the King's prerogative. *Bracton lib. 3. tit. de actionibus, cap. 10. Et si ipse Dominus Rex ad singulas causas terminandas non sufficiat, ut levior sit illi labor in plures personas partito more, eligere debet de regno san viros sapientes & amantes Deum, in quibus sit veritas eloquiorum, qui & aderunt auariciam (que inducit cupiditatem) & ex illis constituere Justiciarios, Vicecomes, & alios Ballivos, & Ministros suos, quibus referantur omnes questiones super dubiis, quam querimonias super injuriis, i. e.* And if our Lord the King be not sufficient to determine all controversies himself, he ought to select wise men, fearing God, and hating covetousness, and out of them constitute Justices, Sheriffs, Bailies, and other officers, to whom controversies and complaints may be referred. The practice of the law hath always been the same since *Bracton's* time, and all Judges and chief officers appointed by writ, patent or commission from the King. Hence it is that all patents and commission of Judges, and other such officers, are determined by the common law at the King's death. *Coke tit. discontinuance de proces, &c. part. 7. 30. Al common ley per demise le Roy le plea suis discontinue, & le proces, que fait agard, & nient retourne devant le mort, le Roy suis perde: Car par de breve dol predecessor rien peut estre execute in le temps dol novel Roy, si non que il soit in especial cases; car le mort le Roy, non seulement les Justices de la Banck & de laing,*

& Barons del exchequer, mes les viconts auxi & eschevours,
& tous commissions de Oyer & Terminer, Gaole delivery,
& Justices de Peace, sont determinez par la mort le predecesseur
qui eux fist, i. e. By the Common law all pleas were discon-
tinued by the death of the King, and process awarded and
not returned before his death, was lost: for by the writ of
the predecesseur nothing can be executed in the time of
the new King, except it be in some special causes: for
by the death of the King not onely the Justices of both
the benches, and the Barons of the exchequer, but Sher-
riffs also, and Escheatours, and all commissions of Oyer
and Terminer, Gaol delivery, and Justices of Peace, are
determined by the death of the predecesseur that made
them.

Fifthly, the power of making leagues and contracting
alliance, as also of making war with foreign States is
in the King alone: Coke, lib. 7. c. 2. Leagues between our So-
veraign and others are the means to make allies friends, & for-
eigners percuere to make leagues, only and wholly pertaint
to the King: wars do make aliens enemies, and bellum in-
dicere belongs only and wholly to the King, and not to be
subjects, as appeareth in 13 E. 4. fol. 6. 6. It hath been re-
solved by the Judges, that if all the people of England col-
lectively taken should break the league made with a for-
eign Prince, without the King's consent, the league
holds, and is not broken. There are yet other rights of
Majesty as the power of Coynage, the power of granting
letters patents of Denization, the power of dispensing with
such laws, as are dispensable, and the power of Pardoning
the transgression of them, with divers others, all which be-
long to the King by the Common law: but because they
are not called in question, I will pass them over.

19 E. 4. 46.
22 E. 4. Fitz.
jurisdiction
last placite.
Judge Jen-
kins fol. 17.

CHAP. II.
Of the King's Supremacy in the Church.

The King's Supremacy Asserted.

CH. A. P. VI.

*The King's Supremacy both in general and particular
shewed by reasons depending upon the Laws and
Customes of the Land.*

Although I esteem positive Laws and customes more demonstrative than deductions and inferences; yet these have also their weight and importance; I will therefore in the last place add such reasons as shall sufficiently confirm the King's Supremacy, although the laws had positively declared; or the Judges resolved nothing concerning it.

First, that power which is so under controul that it can be annihilated at the will of another, must needs be inferiour to that power which doth so overrule and master it. Now such is the condition of Parliaments that the King by Law can annihilate them at his pleasure; for they depend upon him *quoad existentiam* for their existence and continuance: If it should be granted that Parliaments are *in alio signato* by original constitution, yet the precise time of their existence, and continuance, hath always been at the King's appointment, it being in his power to call them and dissolve them when he please, so that they must needs be subordinate to him and depend upon him for their operation, when they depend upon him for their existence.

Answer.

To this the reverend Divines, answer, for the convention of Parliaments, the State hath authority in some cases to meet together in Parliament without a legal warrant from the King.

as if the King be a prisoner in the enemies hands, or distracted; and have done it de facto in the infancy and minority of some Kings: and for the Dissolution of Parliaments, they say that they have heard wise men affirm, that by a Law a Parliament cannot be dissolved whilst there are any Petitions of Grievances, or such matters of importance depending and unfinished.

What needed the Reverent Divines to have cited these *wise men*? Could they not as easily have said themselves, that Parliaments could not be dissolved by the King's Command, as they said they might be called without it? Perhaps they thought that such notorious fallacies would never pass currently amongst the people, if they were not confirmed by the authority of *wise men* as well as by their own: yet I believe the *wise men* they speak of were not so wise as *Thales Milesius*; but whatsoever they were, their magisterial dictates must not pass for Law; for both that which these *wise men* affirm, and that which they affirm *themselves*, is manifestly opposite to law and truth. There was never yet since the first foundation of the Monarchy a Parliament called without a legal Warrant from the King, nor can a Parliament be called without it; for the cases put by them are altogether impertinent, and cannot be supposed: the King according to his politick capacity cannot be a prisoner, or an infant, or distracted, but in case his condition be such as make him incapable to guide and manage his charge in person, as in case of infancy, or distraction, the law hath made sufficient provision who shall exercise the regal power in such occurrences; if he be prisoner in the enemies hands he may substitute others, or if he be so closely kept as that cannot be permitted, in such events also the law is not deficient: but in all these cases nothing can be acted by authority inherent in the people, but by the King's authority, which can never be in prison, nor is it subject to infancy or distraction; and Parliaments called at such time, by those that have authority by law to exercise the Royal Power, are called by a legal Warrant from the King, and without such

The King's Supremacy Asserted.

Modus tenendi Parliamentum 4. pars instit. fol. 3. 4.

such a legal Warrant they never were nor can be called: If there have been any general Conventions without it, as the Reverend Divines (who should have done well to have quoted their Authors, and their words) assure us, their Acts were never esteemed Laws, nor such Conventions, Parliaments. And that the King hath a power by Law of Dissolving Parliaments when he shall think it fit, hath been always without controversy: The two Houses in the last Parliament, though thrifty managers of their privileges, never claimed an Arbitrary Power of sitting without the King's assent: It is a known Maxim of the law, *Rex est Principium, Caput & Finis Parliamenti*. The King is the Beginning, the Head, and the End of Parliament.

Secondly, He that last fashioned and reformed the English Monarchy, obtained the Crown by Conquest; he had it not by election as a gift and gratuity of the People, but made his passage by the Sword; and Conquerours are not wont to allow of such coordinations, or admit so many sharers in the rights of Sovereignty as it is phantasied.

1. Answer.
Repl'y.

Some answer, *That Conquest is no good title.*

I shall speak of this at large in the second question, where I shall shew that Conquest, by a just War undertaken by those that have authority, is a lawful and just title.

2. Answer.

Others answer, *That the Conquest was not full and entire, but a partial conquest, occasioning a composition and agreement, and so the Government is specified according to that final composition and agreement, which was made.*

Repl'y.

I deny not a composition and agreement, but I say there was none such as is pretended: for the composition and agreement was made after a victory, and it is not probable that the Conquerour having been at such expence of blood in gaining the Crown and Rights of Sovereignty, should after his victory give them away again, and agree to such a composition as is pleaded for. And although it may be justly exacted from them to prove that there was such a composition

fiction

fiction and agreement, as they speak of, made between them; yet I will take the burden of proving upon my self, and shew there was not: for all the composition and agreement which was made, or reported to be made by any Author, was a grant from the Conquerour, that the Kingdom should enjoy the ancient laws and customs, whereby it had been formerly governed, which were called the Laws of King Edward: This he performed, being moved by the petitions and instances of the people, in the fourth year of his reign, wherein he confirmed unto them the said Laws and Customs. Now amongst the Laws of King Edward there is nothing to be found that can give the least colour or pretence for such a coordination as is conceited, but on the other side the King's Supremacy is chiefly established by the ancient Laws of the Land, for the Common Law was the same it is now, before the Conquest, and is the base and pillar of Royal Power, as hath already been shewed sufficiently: To which I could add many other things out of the Laws of King Edward, wherein the King is declared to be a Monarch, and to be God's Vicergerent, constituted and ordained to govern the Kingdom (which includes the people collectively taken) and his Church, and to protect and defend them (which is an Act belonging only to Supreme Authority, and which cannot be performed without it) from injuries and oppression. *Res autem quis Vicarius summi Regis est ad hoc est constitutus ut regnum terrarum, & super omnia sanctam veneretur Ecclesiam ejus, & regat, & ab injuriis defendat, &c. Universa vero terra & tota & insule omnes, usque Norwegiam, & usque Daniam, pertinent ad coronam regni ejus, & sunt de appendiciis & dignitatibus regis, & una est Monarchia, & unum est Regnum, & vocabatur quondam Regnum Britannia, modo autem vocatur Regnum Anglorum. i. e.* The King, because he is the Vicar of God, is ordained that he may govern the Church and his Kingdom, and the people of God, and defend them from all injuries, &c. But the whole Continent, and all the Islands, as far as Norway and Denmark, belong to his Crown, and are the ap-

Acxviii. fol. 142.

appurtenances and dignities of the King, and are one Monarchy, and one Kingdom, and it was anciently called the Kingdom of Britain, now the Kingdom of England. By another Law of King Edward all men within the Realm are obliged to take an Oath of Allegiance,

^a Befold. de
jurib. Maje-
stat. cap. 2.
num. 36.
Bornit. de
Majest. c. 17.

and to promise fidelity to the King, ^a which is a duty to be payed only to supreme authority. ^b Ita debent fo-

cere omnes Principes, & Comites, & simul jurare coram Episcopis Regni in polcmote & similiter omnes proceres regni, & milites, & liberi homines universi totius regni Britannie facere debent in pleno polcmote & fidelitatem Domino Regi ut praedictum est coram Episcopis Regni. i. e. So

^b L. 35.

ought all Princes to do, (that is, to take the Oath of Allegiance) and Earls, and swear together before the Bishops of the Kingdom in a publick assembly, in like manner all the great men of the Kingdom, and Knights, and all the Free-men, ought to do fealty to our Lord the King, in a full assembly before the Bishops of the Kingdom.

^c Johan. Cor-
vin. Breviar.
cap. 11. Ei-
sol. cap. 2. de
jur. Majest.
Special.
num. 41.
Morle in
Empocio ju-
ris tit. 1.
quæst. 2.
Petra cap.
25.

To conclude this point; by the Laws of King Edward the Crown hath *legibus solutam potestatem*, ^c which is a Prerogative competent to none but Supreme Powers: by them the King may dispence with the Statutes, pardon the transgression of them, and loose whom he please from imprisonment wheresoever he goeth by his bare word alone. ^d *Habet etiam Rex alterius modi potestatem mi-*

sericordia super captivos; ubicunque enim veneris in civitatem, vel burgum, vel castellum, vel villam, vel etiam in via, si captivus fuerit, potest eum solo verbo solvere à captione: Solutus tamen satisfaciatur cui foris fecit. Mordator vero, vel traditor hujusmodi criminis, quamvis Rex in condonaverit vitam & membra, secundum legem nullatenus in patria remanebunt. i. e. The King hath also another kind of power of

^d L. 19.

pardoning such as are in prison; for wheresoever he goeth into any City, Borough, Castle, or Village, or also in the high way, if any prisoner be there, he may by his word alone release him from imprisonment: yet he that is so released, must satisfy those to whom he hath made

the

the forfeiture, but a Murderer, Traytor, or any such notorious Delinquent, although the King hath given him his pardon of Life and Member, may not by Law remain in his Country. The Laws then granted by *William* the Conquerour did not deprive him of the Rights of Sovereignty, but did rather strengthen his Title, joyning Law to Conquest; for lest he might inconsiderately suffer his wings to be clipt, before he made the said Giant he caused all the Laws and Customs that were in force in the time of King *Edward* to be written out, and then after good deliberation, finding nothing in them prejudicial to his Crown and Royal authority, he ratified and confirmed them. For whereas some of them say the Fundamental Laws are not written (that so they might cover their fraud and deceit, who pretending fundamental Laws are able to alledge nothing out of them) this is contrary to all the Histories and Records of those times, which testify that *William* the Conquerour commanded twelve of the wisest men to be chosen in every County, who did upon Oath declare all the Laws and Customs which they knew, not adding or omitting any thing; *Aldred*, Arch-bishop of York, who had crowned him, and *Hugo*, Bishop of London, as *Chronicon Lichfeldense* relateth, writ them out with their own hands. Yet he granted not these Laws without some emendations, as appears by the Laws of *Henry* the first, *Legem Regis EDWARD I vobis red- Leges H. 1. do cum illis emendationibus quibus ego Pater meus emendavit* c. 2. *Consilia Baronum suorum* i. e. I restore unto you the Laws of King *Edward* with those emendations, which my Father by the advice of his Barons added unto them. For although he let the old foundation stand, yet he enlarged it, and added divers new Dignities and Preheminencies to the Crown; nor wholly relinquishing the Rights he had gained by Conquest, as some without ground or reason affirm, but joyning the Rights of Law and Conquest together: And this was all done by consents and agreement of the people, and confirmed by Act of Parliament.

Thirdly,

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Thirdly, The two Houses of Parliament are but the Kings Council, according to their usual stile, both in our Statutes and Law-Books: at first the Members of the Pretended Parliament gave themselves no other name, and in probability would have been longer content with it, upon condition, his Majesty would have observed their Counsels as Laws, and have acknowledged himself bound to obey them: for they were willing then he should have had the title of a King, so themselves might have had all the power and authority belonging to the Crown. But the truth is, there is a great distance between Counsels and Commands; Counsellors are but subordinate Officers, and may not impose their Counsels for Laws upon those which they serve in that employment.

1. Answer.

To this it is answered, first, *That the two Houses are called the Council of the Realm, as well as the King's Council, and are trusted by the People, as well as by the King.*

Reply.

Although in some respects they be trusted by the people, yet as touching the office of Counsellors, they are trusted by the King; and when they are called the Council of the Realm, it is all one as if they were called the Council of the King, for under divers phrases the same thing is signified, it being an usual custom in Law in expressions of this kind to take the Realm or Kingdom for the King himself. *Coke lib. 7. c. 2. And affirmeth in the reports of our Book-vases, and in Acts of Parliament also the Crown or Kingdom is taken for the King himself, as in FITZ. NATUR. BRE. FOL. 5. where IN CAPITALE is a tenure of the Crown, and is Signory in grosse, that is of the Person of the King, and so is the 30. H. 8. Dyer fol. 44. 45. a tenure in chief as of the Crown, is merely a tenure of the Person of the King, and therewith agreeth 28. H. 8. tit. tenure Br. 65. The Statute of the 4. Hen. 5. cap. ultimo gave Priores aliens which were conventual to the King and his heirs, by which gift saith 34. H. 6. 34. the same were annexed to the Crown. And in the said Act of 23. E. 3. whereas it is said in the beginning, within the Kingdom of England, it is*

twice afterwards said in the ligatures of the King; and yet all one ligature due to the King. Somme 400E. 3. fol. 1. where it is first said the ligature of England, it is afterwards in the same case called, the ligature of the King's authority though they used several manner and phrases of speech, yet they intended one and the same ligature. So in our usual Commission of Assize, of Gaol delivery, of Oyer and Terminer, of the Peace, &c. power is given to execute justice secundum legem & consuetudinem regni nostri Anglie: and yet Little lib. 2. in his Chapter of Villenage, fol. 43. in disabling of a man that is attainted in a premunire, saith, that the same is the King's Law; and so doth the Register in the Writ of ad iura Regia stile the same.

Secondly, It is answered, Although the two Houses be the King's Counsel, yet they are not chosen by himself, the Lords are consiliarii nati, born Counsellors; and the Commons are consiliarii dati, Counsellors given him by Election of the People.

2. Answer:

Although the Lords be born Counsellors, and the Commons chosen by the people, yet they cannot sit in Counsel, but at such times as the King is pleased to make use of them; and when he is pleased to Summon them, and command them to sit, the Lords cannot refuse to come, or the people to send their Deputies: nor doth it alter their condition, whether they be born his Counsellors, given him by the people, or chosen by himself; they which are born to places of dignity and jurisdiction, or they which are chosen to them by the people, cease not for all that to be subordinate to the King; they are all his Subjects and Ministers; and are so far from having authority to challenge obedience to their Counsellors, that if their Counsellors be not such as they ought, they are themselves obnoxious to a censure of Law. A King is obliged in time of Parliament to follow the advice and direction of the two Houses, and out of Parliament of his Privy-Counsellors, when their advice and direction regard to the preservation of his Person, and of his Royal Authority; and

The King's Supremacy Asserted.

and to the preservation of his people, and of their rights and privileges: not that Counsellors have authority over Kings, but because the manner of their Counsels do morally oblige their consciences: but if their advice and direction tend to the ruine of either, he may and ought to recede from their Counsels: and such a King is not a Tyrant, but such Counsellors Traitors by the Law. This is mysteriously represented to the words when they are first preferred, to that degree and dignity, by the usual solemnities then performed: for if instead of giving Counsel for the King, they give Counsel against him, they are not only by the Statutes of the Land declared to be Traitors, but if the Statutes were silent, by a tacite condition of Law annexed to their dignities, and vailed under certain ceremonies used at their first creation, they are to be condemned for such, and to forfeit their estates. *Coke in Nevil's case lib. 7. fol. 34. Ceux que sont countes ours office de grand trust & confidence, & sont createz par 2. purposes.*

1. ad consulendum regi tempore pacis: 2. ad defendendum regem & patriam tempore belli. Et par ce antiquite ad done eux 2. enseignes & ressembler ceux deux duties: car premierement, leur teste est adorné avec un capot de bonor, & couronne, & leur corps avec un robe in ressemblance de conseil: secondement, ils sont succintés avec une espee in ressemblance qu'ils feroient. Foyall & loyol a defendre leur Prince & pays: Donques quant telle person enquet le dunt & fine de son dignite, prist non seulement conseil, mais armer aussi encois. le Roy a luy de destruyre & de c. est atteint par due conse del ley, per ceo il ad forfeit son dignite par un condition tacite annexé al estat de dignite.

i. e. They which are Earls, have an office of great trust and confidence, and are created for two purposes, first, to Counsel the King in time of Peace: secondly, to defend the King and their Country in time of War: and for this cause Antiquity hath given them two Ensignes to represent these two duties, for, first, their head is adorned with a cap of honour and a coronet, and their body with a robe in resemblance of Counsel: secondly, they are girt with a sword

sworn, in resemblance that they shall be faithful and loyal to defend their Prince and Country: when such a person then against his duty and end of his dignity takes not only Counsel, but Arms against the King to destroy him, and be attainted thereof by due course of law: He hath thereby forfeited his dignity by a tacite condition annexed unto it.

Fourthly, The Parliament is one of the King's Courts, as is apparent both by our Statutes and Law-books: the two Houses therefore must derive all their authority from him: for the King is a full Sea of Authority, from whom all Power and Jurisdiction, by Commissions, Writs, Letters, Patents, issues through so many channels, run into all his Courts: if the two Houses have authority radically in themselves by fundamental constitution: or if they derive their authority from any other than the King, the Court is none of his.

1. Jac. cap. 1.
Bracton lib.
2. cap. 16.
Fleta lib. 2.
cap. 2.

The Treatise having made divers suppositions, which he telleth the Reader are the Laws of the Land: or to use his own words, the Model and Platform of the English Monarchy: out of the said suppositions frameth this answer.

It is his Parliament, because an Assembly of his Subjects, convoked by his Writ, to be his Counsel to assist him in making Laws for him to govern by: yet not his, as his other Courts are altogether deriving their whole authority from the fulness which is in him. Whereas he calls the Parliament an assembly of his subjects, whereas he saith they make Laws for him to govern by, and that there is a fulness of power in him, he doth but complement with his Majesty: his suppositions and principles agree not with such expressions: for if the two Houses derive not their authority from his Majesty, but have it radically in themselves, how is there a fulness of power in him? if the jura Majestatis be divided amongst them, he hath not a fulness, but his share only of power: or how do they assist him to make Laws to govern by? they assist not him alone, but all the three estates are mutually assistant to one another in making Laws to govern

Answer.

Reply.

H

jointly

jointly, where their joint concurrence is necessary: or to govern in their several charges, where they may act severally. Or lastly, how can they be called his Subjects? Subjection is due to the three-estates acting together, or to either of them in their several places and jurisdictions, as well as to him: for it is due to him in the administration of that power which belongs to him alone, so is it likewise to them by his principles, in things within the verge and compass of their authority. And yet all that he saith, if it were consistent with reason, is not sufficient to make the Parliament his Majesties Court, except it deriveth all authority and jurisdiction from him; it is not enough that they are an *assembly of his subjects*, for in divers foreign Nations, Ecclesiastical persons are Subjects to the Princes they live under, yet Ecclesiastical Courts belong not to those Princes, but to the See of Rome; nor is it enough which he addeth, that they are summoned by *his Writ*, for the Judges of divers Courts, but chiefly of Courts Christian, have sent out Citations and Summons, in their own name, as the King doth by Writ, and yet they are not the Proprietaries of those Courts; nor yet is it sufficient that they are his Council; for his Counsellors make it not his Court, but his Authority; It is Authority that constitutes a Court, and inables it to proceed judicially; he which owns that, is owner and Master of the Court.

Fifthly, Parliaments, as they are now established, consisting of three estates, the King, the Lords, and the Commons, are but of late existence; and therefore such a composition and mixture of the said estates, as is pretended, cannot be by original constitution. It is granted that Parliaments otherwise are of a long continuance, and may plead the prescription of many hundred years; for although the word *Parliament* hath been introduced (as is probable) since the Norman Conquest, yet a convention of that nature was in use in the time of the Saxon Kings, who did seldom make Laws without the counsel and assent of their wise men; and this assembly was called in the Saxon language

language between a Council and Synod. It is granted also that the Commons were sometimes called to such consultations, but that was a thing not necessary, or frequent, but rare, arbitrary, and contingent. There were no certain persons designed by Law, whose concurrence was required to constitute a Parliament, but the King used the advice of those only which he pleased to call unto himself, which were always such as he thought most able to counsel and direct him, in the matters that were to be consulted of, and whose assent was likely to add most credit and estimation to the Laws that were to be divulged. Sometimes he made Laws without the assent of others; for *Offo*, King of the *Mercians*, as *Matthew Paris* relateth, being at *Rome*, ordained that every Householder in all his Dominions, (which were three and twenty Provinces, or Shires) that had above thirty peny-worth of Goods in the field, should every year pay a Peny to the maintenance of the English School that then flourished at *Rome*, which in those times was a great taxation. *His igitur auditis Rex, quid digne tante benignitati compenset, secum studiose pertrahat. Tandem, Divina inspirante Gratia, consilium inivis salubre, & in die crastina scolarum Anglorum que tunc Romæ floruit ingressus. Dedit ibi ex Regali munificentia ad sustentationem Gentis Regni sui illuc venientis, singulas argentos, de familiis singulis, omnibus in posterum diebus, singulis annis. Quibus, videlicet, fors tantum contulit, extra domos in pascuis, ut triginta argentorum pretium excederet. Hoc autem per totam suam ditionem teneri in perpetuum constituit, excepta tota terra Sancti Albani, sue Monasterio donferenda, prout postea collata privilegia protestantur.* i.e. The King hearing this, considered with himself how he might recompence so great a courtesy; at last, by Divine Inspiration, very sound counsel was suggested unto him; and going the next day into the English School, that then flourished at *Rome*, he gave to the sustentation of such as should come thither out of his own Kingdom a peny to be paid yearly for ever out of every family by all whose goods in the field exceeded the value

in vita Off.

L. 4.

L. 10.

Auſar. ad-
ditament. &
fol. 239,
240.

of thirty pence. And this became a perpetual constitu-
tion throughout all his Dominions, excepting only the
Lands, that were to be confiscated upon the Monastery of
Saint Albans, as the privileges afterwards granted do
witness. This Law continued yielding still in force, yet
I find it not confirmed by Act of Parliament either in his
own, or in the Reigns of his Successors. I find only in
the Laws of some Kings, as of King Edgar, and King Ed-
ward, a little provision made for the payment thereof, be-
cause it was the King's Alms, which reason doth imply
that it was not given by the whole Kingdom in Parlia-
ment, but by the King alone. But yet in those times Laws
were made commonly by the approbation and consent of
the Nobles, Archbishops and Bishops, in a publick Synod
or Parliament: Sometimes the Queen was present, some-
times the inferior Clergy, and sometimes also the Com-
mons, but that happened very seldom. I have seen
divers Charters both in the Saxon and Latin tongue gran-
ted to Churches, and Monasteries, confirmed by Act of Par-
liament, and attested by the Members of the same, yet a-
mongst them all I have not seen so much as one, where-
unto the assent or name of any of the Commons is subscri-
bed. I will here insert one, for example sake, granted
to the Monastery of Saint Albans by Egfride, Son of Offa,
because it is but short, and extant in the last Edition of
Mabris Paris, where any one that please may see both
that and divers others of like nature. Ego Egfridas gra-
tia Dei Rex Merciorum, anno Domini incarnationis septim-
gentesimo nonagesimo sexto. Indictione quarta, primis vero an-
no Regni nostri interram. A monachum nomine Thyeofeld
cum terminis suis. Domino meo Iesu Christo et dimittens
Monsiteri Albano, liberaliter et voluntate cum assensu et
testimonio vniuersarum ecclesiarum, et iuramentis, pro anima
mea et parentum meorum deuotione scribo et libenter con-
cedo. Et hinc predictis terra ad omni curra servitutis paga, sive
pro aliis, et alijs eadem libertatem sit libera, quia curra sive
libertatem habent in libertate. Et hinc sive et hinc
liber. Offa genitore meo. H. + Ego

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enacted; yet, except only in the Preface of King *Inda*'s Laws; there is no mention at all made of the Commons, but several Kings made most of those Laws by the advice and consent of their Bishops, and wise men, which were no other than their Privy Council; Mr. *Lambert* in his *Archaion* affirmeth them to be the Nobility and Commons, and to support his opinion he alleadgeth a passage out of the Preface of the Laws of King *Eldred* which is neither material, nor faithfully cited; for there is no such passage to be found in that Preface. But to make his error apparent I shall need no other testimonies, than two precedents mentioned by himself, the first is of a Parliament holden by *Edwin*, K. of *Northumberland*; the second of a Parliament holden by *Segebert*, K. of the East Saxons, whereunto they called their friends and their wise men: for *Edwin* being instigated by *Paulinus* the Embrace the Christian religion answered *þe wile mid his freondum 7 mid his þeowm* *þeasce* *geþeow* *habban*, *þat he would speake with his friends and with his wise men in Parliament*; which he did accordingly, and by their assent, himself, his whole Nobility, and a great part of the Commons, were baptized. In like manner *Segebert* held a Parliament whereunto he called his friends and his wise men upon the like occasion, *Da ðær ðe geþeow mid ðis wile 7 freondum 7 mid þeowas* *apfere* *ysse* *7 þeowum* *7 geþeowum* *en 7 ær geleafan onfere*. *Then he held a Parliament with his wise men and friends, and by their advice, aid and consent, received the Christian faith*. From this I gather that their wise men could not be their Nobility and Commons, as Mr. *Lambert* supposeth; if Parliaments had been then so moulded as they are at this time: for all their friends must needs be contained under one of those degrees, and in case his supposition were true, should not have been distinguished from their wise men, which in all good construction they must; for the words do evidently imply, that besides their wise men, they called such other of their friends, as they thought by reason of their prudence,

Beda Hist.
Eccles. lib. 2.
cap. 13.

Beda Eccles.
Hist. lib. 3.
cap. 23.

cause it would require us to leave Frontiers open sufficient
 ly of this subject, and decide to some way prejudice the
 cause in many of our great Parliament as they are now mould-
 ed to be by fundamental agreement, seeing the K^y by the
 Laws of the Land and the said fundamental agreement, is in-
 rolled, as hath been already said, with all the Rights of Sovere-
 aignty, it will be by many advantages, and some many rea-
 sons and passages which I would allege touching this matter.
 First, If the Nobility and people be then, and only
 then coordinate with the King, when they are in their
 full relation, order and union, in Parliament, as the full-
 ly assembled assembly is in time of Parliament, the King-
 dom should be a Head without a Body. For if the King
 be part of the Head, and the whole Nobility part of the
 Head, and all the people part of the Head too, where is
 the Body? And on the other side, in the vacancy of Parlia-
 ments, the Kingdom should be a Body without a Head.
 For if the Nobility and people be only coordinate when
 they are in their full relation, order and union in Parlia-
 ment, after a Parliament be broken up, where is the
 Head? For as the preservation of the whole consists in the
 order and union of its parts, so the dissolution of it fol-
 loweth their separation and divorce. If this opinion then
 were true, the Common-wealth should be a strange de-
 formed Monster, for in time of Parliament, when all the
 Body were a Head, it should be monstrous by too much
 perfection; and out of Parliament, when two parts of the
 Head were fallen into the Body, it should be monstrous by
 too little: In both cases it should want that beauty and
 comeliness which consists in the harmony and proportion
 of several parts.

Seventhly, If we descend into particulars, we shall find
 Parliaments to be so molded; that their frame and com-
 position rendereth the two Houses an unmeet subject for
 Supremacy: for the Militia, the power of making War or
 Peace with foreign Princes, and most of the other rights of
 Sovereignty, require a subject perpetually existent;

many

many occasional accidents may arise that may call for present and sudden use of the Supreme Power, for which there can be no provision made by bodies not existent.

Lastly, If the people collectively taken be Supreme and above their King, there should be in every Kingdom of the World many Millions of Kings, namely, *All the Subjects*, and these many Millions of Kings should have but one Subject amongst them all, namely, *Their King*.

I could add much more, both from the Statutes, Common Law, and Reason, as well concerning the King's Supremacy in general, as concerning the particular Rights of Sovereignty: But I presume that which hath been said is more than sufficient, not only to satisfy all that are indifferent and neutral, but to convince those that are most interested, who shall not easily find shifts and distinctions plausible enough to illude such clear testimonies of Law. But God only is able to change their hearts, and to make such impressions there, as can cause them to repent and turn from their evil ways: I shall pray continually he would do it, as well in regard of the peace and happiness of the Kingdom, as of their own salvation, which I cannot otherwise hope they should obtain; For whatsoever deceives them, and bears up their spirits for a time, *Repentance at last* (if God give them grace) *will prove their best fortune.*

The King's Supremacy Asserted.

C H A P. VII

Divers Objections made by the pretended House answered: The King's Supremacy shewed to be in His Person, not in His Courts.

THE King's Supremacy being made apparent I shall now proceed to answer their objections, which yet are of that nature that they deserve more to be contemned than answered: for in stead of Law they alledge Brda's axioms, their own fancies, and such other impertinencies, as one would think should sooner move a man to laughter, than to be of their opinion. But because they shall not complain that their objections are concealed, and because in answering them I shall further confirm the King's Supremacy, I will bring them all in order, not suppressing or omitting any thing that hath but the face of an objection, how slight and impertinent soever. I will begin with that which is alleged by them in several declarations, the summe and substance whereof, is that which followeth.

1. Objec.

The King's Supremacy is meant in curia non in camera, in his Courts not in his private capacity, and to speak properly only in his high Court of Parliament, wherein he is absolutely supreme Head and Governour, from which there is no appeal.

And

The King's Supremacy Asserted.

19

*And if the Parliament may take account what is done by 2. Object.
his Majesty in his inferior Courts, much more what is done
by him without authority in any Court.*

*And it is preached to the people in the King's Declarations, 3. Object.
that by the Supremacy is meant a power inherent in the King's
person, without, above, against all his Courts, the Parliament
not excepted, whereby the excellent Laws are turned into an
arbitrary Government.*

Argus Eyes will scarce be able to discover a word of Reply.
Law or truth in all this, every sentence seemeth rather
to be a Sarcastme than to contain matter of serious impor-
tance, wherein they deal with his Majesty, as the Jews
did with our Saviour Christ, who having stripped him of
his apparel, and used all the spitefull and opprobrious
tearms they could devise against him, added at last a mock
to their other incivilities bowing unto him, and saying,
HAILE KING OF THE JEWS. The pre-
tended House having likewise seized upon all his Maje-
stie's Revenues, and rights of the Crown, and offered
him all the indignities they could invent, do yet style him
their King, and supreme Head and Governour, but in such
a manner, as they may seem, like the Jews, rather to doe
it by way of derision than in earnest.

*The King's Supremacy, they say, is meant in Curia non
in Camera, in his Courts not in his Private capacity. As they
fancy the people to have conveyed all authority to the
King, so they fancy the King to have pouted it out again
into his Courts, as if he had no power, authority or
jurisdiction, adherent in his person, but had committed
all to his delegate Judges, or rather (which they say is to
speak properly) unto themselves: whereas he hath by law
a royal and supereminent jurisdiction above all his courts,
and may call causes out of them before himself, or hear
appeals, and reform their abuses when occasion requires.
Lambart. Archaion fol. 95. I shall not need to repeat that
which I have before this time opened, touching the beginning
of the Kingly power and authority, for the delivery of justice*

Manwood of
forrest laws
part 1.

The King's Supremacy Asserted.

to all the sorts, and in all the suits of his subiects, but I will confirm by proofs drawn out of our Country Laws and Lawyrs, that the self-same general jurisdiction is appropriated to all the Kings of this Realm of England. Master Henry Bracton that lived in the time of King Henry the third, hath in the ninth and tenth Chapter of his book these words following: Rex (& non alius) debet judicare, si solus ad id sufficere possit, cum ad hoc per veritatem Sacramenti teneatur restrictus, exercere igitur debet Rex potestatem juris, sicut Dei Vicarius & minister in terra. Sin Dominus Rex ad singulas causas determinandas non sufficiat, ut levior sit illi labor in plures personas partito onere, eligere debet viros sapientes, & timentes Deum, & ex illis constituere justiciarios. The words do prove two things serviceable to this purpose: first, that the King only is to be the judge of his people, if he alone were able to perform that office, as well because he is within his own Kingdom the Vice-Roy of God, (the Supreme Judge of the World) as also for that he is thereunto bound by Oath, taken at the Coronation. The second that albeit he do (for the multitude of causes) substitute others underneath him, yet is he not thereby discharged himself, for it is done ut levior sit illi labor, that his labour be the lighter, not that he should sit unoccupied; and least you should doubt that so much is not comprised in that Oath of his, one question therein amongst others is this: Facies fieri in omnibus judiciis tuis æquam, & rectam justitiam, & discretionem in misericordia, & veritate secundum vires tuas: To which he answereth, faciam: wherein the words judiciis tuis, & vires tuas, do more properly denote his own doing, than the doing of his subalterne Justices; albeit their judgment be after a certain manner, the judgment of the King himself also, from whence their authority is derived. Much like the words of Bracton speaketh King Edward the first in the beginning of his book of Law, commonly called Britton: where after he had shewed that he is the Vicar of God, and that he hath distributed his charge into sundry portions, because he alone is not sufficient to hear and determine all complaints of his people: then he addeth these words, Nous volons que nostre jurisdiction soit sur tous jurisdictions

to becomen
awell for
the king

The King's Supremacy Asserted.

lons en nostre realm: issent que in tous manners de felonies, trespass, contracts, & en tous manners de autres actions personals, ou real, ayons poer a rendre & faire rendre les judgements siels come ils, asseront, sans a uter processe, par la ou nous scavons la droit verite come Judges. *We will, saith the King, that our own jurisdiction be above all the jurisdiction of our Realm: so as in all manner of felonies, trespasses, contracts, and in all other actions, personals, or reals, we have power to yield (or cause to yield) such judgments as do appertain (without other process) wheresoever we know the right truth, as Judges. Neither may this be taken to be meant of the King's Bench, where there is only an imaginary presence of his person; but it must necessarily be understood of a jurisdiction remaining and left in the King's Royal body and breast, distinct from that of his Bench, Marshalsey, Common-Pleas, Exchequer, and the other ordinary Courts: because he doth immediately after, in the same place, severally set forth by themselves, as well the authority of the King's Bench, as of the rest of those his ordinary Courts of Justice. And that this was no new made Law, or first brought in by the Normin Conquest, I must put you in mind of that which I touched before, out of those Saxon Laws of King Edgar, where you did read it thus: Nemo in lite Regem appellato, nisi quando domi jus consequi non poterit, sin iuris summi onere domi prematur, ad regem ut is id oneris allevet, provocato: Let no man in suis appeal to the King, unless he may not get right at home; but if that right be too heavy for him, go to the King to have it eased. By which it may evidently appear, that even so many years ago there might appellation be made to the King's Person, whensoever the cause should inforce it. Hitherto Mr. Lambart; who doth afterwards further prove this supreme and supereminent Jurisdiction of the King by divers Precedents and Acts of Parliament. And although the Commons in some other Parliaments have seemed to impugn this Prerogative, yet here, as he saith, The King's always most gravely and considerably repelled that sort of attempt. The King's Supremacy then is inherent in his Person, not in his Courts, as the pretended.*

Fol. 123.

tended House affirm; for his politick capacity cannot be separated from his natural; but what power he ever he maketh over unto his Courts, the same and greater remaineth in Himself; His authority is not separated from him by such a concession *Primitive*, but *Cumulative* only, as *Civilians* distinguish in Concessions of like nature made by the *Emperour*; that is, He loseth no authority by Communicating it to others, but others hold that which is communicated together with himself. As God loseth no authority by communicating it to Kings, so Kings lose it not by communicating of it to their Courts. The *Civilians* give these reasons for the ground of their Law, not much different from those alledged by *Lambert*; out of *Bradon* and others, *Credendum non est Imperatorem ipsa fontes suos derivasse foras ut nihil penes se remanserit; sed in quavis concessione semper autoritas & persona ejus excepta censetur: quis enim tam stolidus ut alii benefaciendo seipsum consumere velit, cum etiam Principis sit, & ad officium ejus proprie pertineat jus dicere Knichen. d. superiorit. verit. cap. 3. num. 518. Wurms. exercit. 3. num. 15. Rosent. d. feud. cap. 3. conclus. 13. Pruckman. d. Regal. cap. 1. num. 17. Leipold. d. Concurrent. jurisdict. quest. 1. i. e.* It is not to be imagined that the Emperor should so empty his fountains, as to leave nothing in himself; but it is to be conceived that in every Concession his own person and authority is excepted, for who is such a fool to consume himself by doing good to others, it is also the essential property and office of a Prince to do justice.

The pretended House proceed; And to speak properly, only his high Court of Parliament, wherein he is absolutely Supreme head and governour, from which there is no appeal.

Reply.

They speak not more properly, as they say, but much more improperly than they did before; it is the same authority that is in all his Courts, and in his Person too, though not all the same authority; for it is limited and restrained in his Courts by Commission, Writ, or Law; and according as those limitations and restrictions are more or less, so may Courts be said to have a greater or less Jurisdiction,

but

The King's Supremacy Asserted

but not the King to be more or less Supremack, nor is their expression improperly, but also full of falshood and deceit; for whereas they say, *there can be no appeal from the High Court of Parliament*, they desire the people should for continue their words, as to think the two Houses could jointly, by reason of the King's Virtual Presence, take cognizance of a Plea; and give judgment upon it, from which there could be no appeal; which had they spoke but their falshood had been transparent, for only the Lords House is a Court of Judicature, and from thence Appeals may be made to the King, who may and have reformed the undue Proceedings of that Court; for *Ann. 18. Edward. 1. Bogo Lambart's de Clare* being discharged of an accusation put against him in Parliament for some Imperfections of form that were discovered in the complaint, the King commanded him nevertheless to appear before himself *ad faciendum & recipiendum quod per Regem & ejus consilium fuerit faciendum*, and so proceeded to a re-examination of the whole cause. Neither is the former part of their words truer than the latter; the King's Supremacy they say, to speak properly, is only in his High Court of Parliament. This in their sense is false; the Supremacy of the King is no more in his High Court of Parliament, by reason of his Virtual Presence, or politick capacity, than in his other Courts; where he is personally there, his Supremacy then, together with his Person, is in the Court, nor otherwise. For I have shewed already in divers places, that the Rights of Sovereignty are not only individually inherent in his Person, but so inseparably also annexed unto it, that they cannot be communicated to others by any grant or concession made by himself in private, or by an Act of Parliament. I shall now add, that their conceit is called in *Cook's Reports* a damnable and damned opinion, and hath been at large case confuted and condemned by all the Judges, as is there related; it was first invented by the *Spaniards*, who to cover their Treason, said that homage and the oath of Ligeance was made by reason of the King's Crown; that is, by reason

Archeion
fol. 133.

Lib. 7. in
Calvinet

The King's Supremacy asserted.

of his politick capacity, than by reason of the *Person* of the King: from which opinion they inferred these detestable consequences: 1. If the King do not demean himself by reason, his Lelges are bound by oath to remove him. 2. Seeing the King could not be reformed by suit of Law, that ought to be done *per asportum*. 3. That his Lieges are bound to govern in aid of him; all which were condemned by two Parliaments; one in the Reign of *Edward* the second, called *Exilium Hugonis le Spencer*. And the other anno 1. E. 3. cap. 1. And indeed their conceit is so irrational, that it might easily be prognosticated they would never make good Statesmen: For when the King is not personally present in his Courts, he can be there by reason of his politick capacity no other ways but by Virtual Emanation; there can be in them no more authority than is delegated and committed to his Judges: Now, it is a common conception, as evident as the first principles, that a delegate power cannot be supreme; The exercise of supreme authority in some Common-wealths may, but the power it self cannot be delegated. Kings may also abdicate and resign up supreme authority, but they cannot delegate it. In how general terms soever, say *Civilians*, authority be granted by the *Concessor* to the *Concessary*, supreme authority cannot be comprised under those terms. *Quocumque modo Regalium concessio fiat, nihilominus superius illud & Majestaticum imperium, eo largitione nunquam censetur comprehensum, sed potius major semper, quam est concessa, reservata & retenta putetur potestas, cap. Dudum. ¶ Hoc igitur de prebend. in 6. l. inquisitio. Et ibi De c. de solut. Perignus de jure fisci, lib. 1. tit. ult. num. 33. Kniken. de jure territorii cap. 1. num. 315. i. e.* Which way soever Regalities are granted, it may not be supposed that supreme authority is comprehended under such a grant, but rather that a greater power than is granted is reserved to the Prince.

2. Objeſti.

Their second Objection is, If the Parliament may take account what is done by his Majesty in his inferior Courts, much more what is done by him without authority in any Court.

This

This if it well put in: they say not categorically they Reply.
may take an account what is done by his Majesty in his in-
feriour Courts, yet they would have the people think
them to have such a power: and therefore they lay it down
as a supposition, which they seem to take for granted,
although they know it to be false: If they were a full
and legal Parliament, they might indeed take an ac-
count what is done in his Courts by subordinate Offi-
cers: but not what is done by his Majesty, who, as King,
can do no wrong: His authority is from God: and if
injustice be committed in his Courts, his Kingly autho-
rity is not the cause thereof, but the corruption of his
Judges who abuse it; and his Majesty may take an account
of them either privately or in his Parliament: but is
not himself accountable for their abuses. For although the
judgment of his Courts may, and is termed in Law the
judgment of the King, yet that it to be understood of
the *Act itself*, which cannot be effected without his in-
fluence and concurrence: not of the *obliquity and deviation* i. H. 7. 4.
from Justice which is in it. Not is he yet accountable to any
but God for his personal actions: by the Laws of the
Land he cannot be obnoxious to any guilt, had he commis-
sed Treason or any other crime before he was King, by ta-
king the Crown upon him, all stains of his Person are pur-
ged *if a fall*. Enough hath been said already to prove both
the Houses and the Members thereof, as well collectively
as severally taken, to be his inferiour delegates, and sub-
ordinate Ministers, that derive their authority from him,
and in case of grievance are to sue unto him by Petition,
which is all the help the Law giveth in such instances:
for they are so far from having any jurisdiction over him
in matters of misdemeanour, that they cannot take know-
ledge of those cases wherein Majesty, without disparage-
ment may submit it self to a legal trial, as in controversy
of right, or of title to land, &c. except he be pleased
to have the business decided in that Court. In *Freder-
ick's* case before mentioned, it is resolved by all the Justices

22. E. 3. 6. ces, that controversies which concern the King cannot be determined in Parliament; and it is there added above what hath been cited, that Kings may not be judged by others than themselves and their Justices, *naques Roys ne seray adjuge si non par eulz mesmes & leur justis*. And this is true; as it was resolved by *Scrope* in the Bishop of *Winchester's* case; not only in respect of others, but in respect of the Members of Parliament themselves: for although they are to be tryed by their own respective houses in things which concern the Parliament; if the fact touch not the King; yet if it touch the King, and the case be prosecuted by him, they cannot then take cognisance of it, except he thinks it expedient, who hath power if he please to try it in any of his other Courts. *Fitz. tit. coron. p. 3. E. 3. p. 161. Ceux queux sont Judges in Parliament sont Judges de leur Piere, mes le Roy n'aver Piere in sa terre de mesme, per que il ne doit pas estre judge ne allowe faire son suite vers eulz qui lay trespasso quant la ou lay pleigt. &c.*

They which are judged in Parliament, are judged of their Peers, (*that is, the Lords & the House of Lords, and the Commons by the House of Commons*) but the King can have no Peer in his own Land; and therefore he ought not to be judged by them, nor to make his protest against him that offends, but where he please himself.

3. Object.

Last of all, they charge the King for attributing too much power and authority to himself. *And it is preached to the People in the King's Declarations, that by the Supremacy is meant a power inherent in the King's Person without, above, against all his Courts, the Parliament not excepted; whereby the ancient Laws are turned into an Arbitrary Government.*

Reply.

It is no wonder if the Members of the Pretended House were more inclined to hear what their own Seditious Divines preached in *Saint Margarets*, than what the King preached in his Declarations; yet I believe it had been better for them if they had entertained his Majesty's Person and Declarations with more respect and duty.

How

However for the present they may seem to have ruined him and his people too; yet they which have mounted to places of dignity and profit upon the dead bodies of the King and People, may find in the end, that Rebellion and Murder is not so high, but that vengeance and divine Justice sit above them. As for the charge which they bring against his Majesty, it is partly false; his Majesty never used such expressions as they pin upon him: where doth he say that he hath a personal power above and against the Parliament? Let any man produce the words out of which he can force such a sense. Their Charge is also partly vain and frivolous; for whereas they accuse him for saying his Supremacy was inherent in his Person, they might as well accuse him for saying he was King: Supremacy is an essential attribute of Majesty, and cannot be separated without the corruption of its Subject; to say the King's Supremacy is in his Courts, and not in his Person, is not only to contradict the Laws, but the Common Principles of Reason. This hath been demonstrated in divers places; yet because occasion is offered again, I will here add the Resolution of all the Judges made in the first year of Henry the seventh concerning this matter; for a Parliament being then called, and both the King himself, and divers of the Members, being attainted of High Treason, it was resolved by the Judges that the Attainder of the Members ought to be adnulled before they could sit in the House: but touching the King it was resolved, that his attainder was adnulled upon his admittance to the Crown, because *the King is personable*, that is, because his Kingly authority was inherent in his Person, by reason whereof he was discharged of all guilt against the Laws. *Es dunque fait move un question que Serra dit par le Roy mesme par ceo que il fait atteint, & puis communication en entor eux, iouts accordont, que le Roy fait Personable, & discharge de ascuns atteints eo facto qil. prist sur luy le Reigne & ce. Roy. i. c.* And then a Question was moved what shall be said of the King himself, for he was also attainted, and after

i. H. 7. 4.

The King's Supremacy Asserted.

communication had amongst them, all agreed that the King was *Personable*, and discharged from all remainder in the very act that he took the Kingdom upon him and became King. Nor is the other part of their charge less frivolous and vain, wherein they accuse his Majesty as if he had committed a great crime in saying his Supremacy was a power inherent in his Person *without and above his Church*; for as hath been shewed, the King hath not only an extraordinary jurisdiction where cases can have remedy no where else, but ordinary also above all his Courts wherein he is but virtually present. *Bracton. Sicut Dominus Papa in spiritualibus super omnibus habet ordinariam jurisdictionem, ita habet Rex in Regno suo ordinariam in temporalibus & pares non habet neque superiores.* That in *Fleta* is also to be understood of the King's ordinary Jurisdiction. *Potentia Rex omnes in Regno suo praecllere debet, quia parem habere non debet, nec multo fortius superiorem in iustitia exhibenda.* The King ought to have a superliment power above all the rest in his Kingdom, because he ought to have no equal, much less a superiour in exhibiting justice.

Lib. 5.
cap. 15.

Lib. 1.
cap. 17.

CHAP.

CHAPTER VII.

Divers general objections made by the Author of the Treatise of Monarchy, touching the limitation and mixture of the English Monarchy, and coordination of the two Houses, answered. The Nature of Absolute, Limited, and Mixed Government, Explained.

THE Author of the Treatise of Monarchy, the fuller Answer, and other Pretended Parliamentarians have invented a new form of Government to delude the People, which they tell them is the Government established in England; namely, a mixed Monarchy, consisting of three Estates, independent for their authority upon one another, all of them being coordinate, and having several shares in the Rights of Sovereignty, by the fundamental Laws of the Land. A strange kind of Monarchy, not so much as heard of until these times, much less established in England: for a Monarchy is the Government of one alone, as the Etymology of the word importeth; now to say, the Government of three Estates, is the Government of one alone, doth not sound half handomely. Other Authors have spoken of mixed Government, and mixed Commonwealths, but of mixed

Besol. Syn-
opf polit.
doct. lib. 1.
cap. 6.

mixed Monarchy in that sense which they do, none but themselves have treated. For according to the Verdict of other Authors, when Monarchy, Aristocracy and Democracy, are melted and allayed together, that which resulteth can take its name from none of the simple species or kinds of Government, although the chief authority, or primity of share belong to any one of the estates. Yet if they will needs have a mixed Government to be denominated from that kind that hath predominancy, they might with better reason have called their new frame a mixed *Democracy*; this denomination (besides that it is not so improper as the other *Democracy*, implying the Government of the People, but not of the People only, as Monarchy doth of the Monarch alone) is more agreeable to the quality and nature of their platform; for the King's authority being so inconsiderable as they make it, the people in this mixture must needs be the predominant Element. The Author of the *Treatise of Monarchy*, who seemeth to give most to the King, although in terms he grants him a *primity of share* in the supreme power, yet in substance he would have it placed in the two Houses, attributing unto them such authority, as they may thereby make him deprivable at their pleasure. Now although the said *Treatiser* seemeth to be a *Poet*, rather than a *Lawyer*, having many new fictions, but scarcely a word of Law in all his *Treatise*; yet because I cannot conveniently reduce his Objections to any of the other Questions that are hereafter to be discussed, I will answer them in this place. But before I come to examine them, that all things may be clear, and better understood, I will, for perspicuity sake, speak a word or two of the division, and several kinds of *Absolute, Limited and Mixed Government*.

I will begin with *Absolute Government*, of which there be three kinds: the first is *Absolute*, both in respect of power, and also in respect of the use and exercise of it. In this kind of Government the Supreme Governours have perfect, *Absolute*, full and intire power; and in the exercise

exercise of it are subject to no limitation made by any humane law, passion or agreement, but are limited *absolutely* by the laws of God and nature only, being otherwise left to the free determination of their own wills. This is also called *Arbitrary Government*; not because such governments as have the free use of their power may do what they please, for their power is bounded by the Laws of God and nature; and may not transgress and go beyond its limits: but because it is not bounded by any humane positive Law made to restrain and regulate it. The ends of Government may be attained several ways in many particulars without breach of the Laws of God and Nature: how when a Governour is not directed to his end in any of these particulars by humane constitution and appointment, but hath an open and free passage to all which way he pleases, his Government is *Absolute and Arbitrary*. Amongst all the several kinds of Government, this only is *pure Divine*, as being more perfect than any humane Law: that could be made to direct it, by virtue and authority, whereof humane Laws were at first enacted; all other sorts were introduced by the policy of men, yet lawful humane Constitutions serving to conduct power to its end; making as it were a furrow, for it to pass in, and to contain it, which otherwise is apt to overflow its bounds, and to degenerate into tyranny. The second is *Absolute* in respect of the power alone. In this kind of Government the Supreme Governours have as perfect, *absolute*, full and intire power as the forer; their authority hath the same latitude, and all the same dimensions; but they are limited otherwise in the use and exercise of it, either by original and fundamental constitution, or else by Laws made afterwards by special grace and condescension: so that although their power be perfect, *absolute*, full and intire, in all respects, and able to produce all the effects of Government; yet they cannot put it in use, and act by it according to their own free affection, nor according to the full stretch of it, but must act according to those limitations

The King's Supremacy Affirmed

one made and granted by Law. The third is *absolute* in respect of its duration only; in this kind of Government the exercise of the supreme authority is committed for a certain time, but the supreme authority is self not translated to one or more, who by virtue of the said commission may exercise the power in an arbitrary manner during the time assigned them; such were the *Dictators* of the Roman Commonwealth, who ruled as arbitrarily all the time of their *Dictatorship*, and the most *absolute* Monarchs in the world yet the supreme authority remained in the *Senate*. And such are they who exercise Royal Power in the minority of Princes, whose Government is *absolute* and *arbitrary*; so was it of *Boleslavin* of *Polonia*. And there are also three kinds of *Limited Government*: answerable to *absolute*; the first is *Limited* both in respect of Power, and also in respect of the use and exercise of it; in this kind of Government there are always more Governors than one, as which are all *Limited* in their effect and being divided in power, having none of them perfect, *absolute* and full and entire authority, but only their several shares and proportion; neither can they act in an arbitrary manner according to the full extent of that power which they have, but have a certain rule set them by law. The second is *Limited* in respect of the power alone; in this kind of Government, as in the former, there are always more Governors than one, which have all their *Limited* shares, yet may all act arbitrarily either jointly together, or every one within the pole and limits of his own authority. The third is *Limited* in respect of the exercise only; in this kind of Government, the Governors are *absolute* in regard of power, but circumscribed and limited in the acts of its exercise; as was that of the *Swiss*. As of *absolute* and *Limited*, so there are likewise three kinds of *Mixed Government* applicable to the others; the first is *Mixed* both in respect of power and also in respect of the use and exercise of it; in this kind of Government there is a mixture of several powers which compound and make

up one perfect, absolute full and intire power; and also of several persons and estates, to whom the said powers do radically and fundamentally pertain, which do jointly concur in the administration and exercise of them. The second is *Mixed* in respect of the power alone: In this kind of Government several persons and estates are mixed together in the possession of power, but one alone doth exercise all the Acts of Sovereignty. In this manner was the *Roman Commonwealth* governed by *Sylla*; and by *Dilators* in the time of exigence and necessity. The third is *Mixed* in respect of the exercise only: In this kind of Government several persons and estates are *Mixed* in the exercise of power, but one of the estates alone hath the dominion and propriety of it.

Now touching the Government of *England*, I have shewed already that it is Monarchical, that the Monarchy is *Absolute*, in respect of the power; that the King alone hath perfect, *Absolute*, full and intire jurisdiction, able, if put in action, to effectuate and bring to pass all the ends of Government: and that all other persons, of all estates and degrees whatsoever, both Nobles and Commons, move in their several circuits and spheres of activity, by virtual emanation from him, and not by force of any power, authority, or jurisdiction of their own. And indeed all Monarchies are *Absolute* in this respect: that is, in respect of the power, for when the limitation is in the essence and being of power, Monarchy is destroyed, not limited.

But yet the English Monarchy is *Limited* in respect of the use and exercise of power, the King being obliged to govern according to the Laws of the Land, which although they do not diminish Majesty in *essentialibus*, yet they do diversly qualifie and modificate it. It is also *Mixed* in the same respect, the King being obliged in some cases not to use his power without the assent and concurrence of the two other estates. The pretended *Parliamentarians*, on the other side, deny the English Monarchy to be *Absolute*

The King's Supremacy Asserted.

in any respect, and affirm it to be Limited and Mixed, as well in respect of the power it self, as in respect of the use and exercise thereof, the two Houses of Parliament being coordinate with the King, not only in the administration of power, but in the possession of it. Yet they are not able to alledge one syllable of Law to make good these strange novelties, but strive by indirect inferences to deceive the people: Howsoever I will bring their objections, such as they are, and answer them in order: and first I will bring their Objections, whereby they endeavour to prove their pretended limitation, and then those whereby they endeavour to prove their pretended mixture.

1. Object.
touching limitation,

Declar. from
Newmarket
Mart. 9.
1641.

I conceive, and in my judgment am perswaded, saith the Treasurer, that the Sovereignty of our Kings is radically and fundamentally limited, and not only in the use and exercise of it: and am perswaded so on these grounds and reasons. First, because the King's Majesty himself, who best knows by his Council the nature of his own power, says, That the Law is the measure of his Power: Which is as full a concession of the thing as words can express. If it be the measure of it, then his power is limited by it; for the measure is the limits and bounds of the thing limited. And in his answer to both the Houses concerning the Militia, speaking of the men named to him, says, If more power shall be thought fit to be granted to them, than by Law is in the Crown it self, his Majesty holds it reasonable, that the same be by some law first vested in him, with power to transfer it to those persons. In which passage it is granted, that the powers of the Crown are by law, and that the King hath no more than are vested in him by law.

2. Object.

Secondly, Because it is in the very constitution of it mixed, as I shall afterwards make it appear, then it is radically limited, for, as I shewed before, every mixed Monarchy is limited, though not on the contrary: For the necessary composition of the other power to it, is one of the greatest limitations; a subordination of transfer, doth not even prove a supreme cause of limited power, a coordination doth always.

Thirdly,

Thirdly, I prove it from the ancient ordinary and received Denominations; For the King's Majesty is called our Liege; that is, legal Sovereign; and we his Liege; that is, legal Subjects. What do these names argue; but that his Sovereignty and our Subjection is legal, that is, restrained by Law? I say, it is restrained by common Law.

3. Object.

Fourthly, Had we no other proof, yet that of prescription were sufficient: In all ages beyond record, the Laws and Customs of the Kingdom, have been the rule of Government; Liberties have been stood upon, and grants thereof, with limitations of Royal Power, made and acknowledged by Magna Charta, and other publick solemn acts; and no obedience acknowledged to be due but that which is according to law, nor obtained but under some pretence and title of law.

4. Object.

Fifthly, The very being of our Common and Statute-Laws, and our Kings acknowledging themselves bound to govern by them, doth prove and prescribe them limited: For those Laws are not of their sole composition, nor were they established by their sole authority, but the concurrence of the other two Estates: so that to be confined to that which is not merely their own, is to be in a limited condition.

5. Object.

Before I come to answer his Objections, out of his own mouth will I condemn him: for if he be perswaded, as he saith in his first objection, that the King by his Council knew the nature of his own power best; why hath he acted contrary to his Majesty's Declarations? why hath he, against his conscience, affirmed it to be lawful to take up arms against him? he knows his Majesty was never of that opinion. Now, to his objections I say, that the second and fifth proceed upon his own principles; namely, that the Monarchy of England is mixed in the power it self, and that the Legislative Power is not in the King alone, but jointly in the three estates: If these principles were true, his objections were material; but I have shewed the contrary, and shall yet shew it further hereafter. In his other three Objections he doth not so much as touch the question propounded; he layeth down this con-

Reply.

elusion to be proved, *that the King's Sovereignty is radically and fundamentally Limited, and not only in the use and exercise of it, but* endeavoureth to prove no more than that it is limited in general, without specifying whether radically, and in the essence and being of it, or in the exercise only. A Legal moderation and limitation of Royal Power, as far as I know, is denied by none, although the Treatiser be pleased to lay a false imputation upon some Divines, because they hold it not limited in the same manner which he hath represented it: The King's Sovereignty to be radically and fundamentally limited, and not only in the use and exercise of it, is, in the sense by him explained, to be so limited, that his Majesty shall not only be restrained in the use and exercise of supreme power, but shall also be stinted in his share of it, and have no more than a single part, two other parts of the said power belonging to the other estates. Now, that he may deceive the people, he maketh a shew as if he had gained his purpose by proving the King's Power to be limited in general, whereas he knoweth well enough that there is a great difference between being limited, and being so limited by law. The King's power to be *measured and limited* by law, includes no more than that his power is of such a size and bigness as the law hath ordained; if the law giveth him perfect, absolute, full and intire power, and limits him only in the exercise of it, this is a restraint and limitation according to law, yet not in the essence and being of power. And indeed this is the true and only limitation of Monarchy, whereby the Monarch's power is limited *ab externo* by humane laws and constitutions, and not by the free and arbitrary resolutions of his own will, and yet Monarchy preserved intire. But when the rights of Sovereignty are divided and placed in several Estates which limit one another, such a limitation is inconsistent with Monarchy. But the Treatiser objecteth further against this answer, that where the limitation of power is only in the exercise of it, and not in the power it self,

all acts of Government are resolved at last into the arbitrary will of the Monarch; for although he be limited in the exercise of power by Law, or promise, yet if he will contrary to Law and Promise sinfully put it forth, his power is authoritative and may not be resisted: this is the full scope and sum of that which he replyeth to Doctor Fern with no small ostentation. *A Legal restraint, saith he, you seem to acknowledge; but such an one as resolves into the arbitrary Will of the Monarch, as I have made it appear in my former Treatise, which you will never be able to wipe off by this or any other reply.* If this Reply were strictly examined, it would appear far unworthy such boasts and brags as are brought to set it out; but I shall only in brief shew the insufficiency of it; and so let it pass. First, therefore I say that we do by this assertion no more resolve Monarchy, than he resolves his mixed Common-wealth, into an arbitrary Government. For although in a mixed Government every one of the estates hath but a limited share, yet taken together they have perfect, absolute, full and intire power; which if they will contrary to law or promise sinfully put forth, it is as authoritative and unresistible as if it were in one man. He will grant, I suppose, the power of Government to be equal in all Common-wealths, and that there can be no essential, but only an accidental difference between them, for all Common-wealths have a sufficiency of power to attain to all the ends of Government, and to make provision for all occurrences, which cannot be otherwise limited than in the exercise. This he confesseth in another place; for disputing about the limitation of power in the essence and being thereof, and having made an objection against it, in answering the objection, he saith, *Such a limitation cannot be where power is supreme, but for limitation to a rule and defined way of working, I cannot see how it withstands the end of Government, which is the same in other terms that he confutes in Doctor Fern, and doth expressly conclude that the power of Government taken in sua*

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Page 23.

la-

latitude cannot be limited in the essence and being of it, but in the use and exercise only; for, to be limited to a rule and defined way of working, is to be limited in the exercise; but not in the essence of power. If then all acts of Government are resolved into the arbitrary will of the governments where the limitation of power is only in the exercise of it, doth he not himself resolve his mixed Commonwealth into an arbitrary Government? But secondly, I say, that to limit power in the exercise of it, is so far from resolving all cases into the arbitrary will of the Government, that it is the only way and means to restrain arbitrariness; the limitation of power in the essence and being of it alone, is not sufficient to restrain it; for when power is limited in its essence and being, and terminated only within its own intrinsic bounds, such a limitation is opposed to an Infinite, but not to an Arbitrary activity. When the three Estates have all their limited shares, yet they may all act *arbitrarily* according to the extent of that power which they have, not only when they act jointly together, but in the administration of their several charges, if their power be not regulated by law in the exercise of it; it is not the limitation of power therefore in the essence and being of it, but in the exercise, which denominates and constitutes a limited Government. Power which is limited in the essence and being of it only, although it cannot act *arbitrarily* in so great a latitude as when it is intire and absolute, yet it may act *arbitrarily* within its own bounds if it be determined only by the will of him that acteth by it, and not by a certain rule of law.

1. *Object.*
touching
mixture.

Answer to
the 19. Pro-
positions.

I come now to the Objections whereby they endeavour to prove the English Monarchy to be a mixed Monarchy. I conceive it, saith the Treatiser, a clear and undoubted truth, that the authority of the law is of a compounded and mixed nature in the very root and constitution thereof; and my judgment is established on this ground. First, It is acknowledged to be a Monarchy mixed with Aristocracy in the House of Lords,

and

and Democracy in the House of Commons. Now (as before was made appear in the first part) it is an unmixed which is not in the rest and supremacy of power. But though it be a subordination of inferior officers, and though the powers inferior be seated in a mixed Subject, yet that makes it not a mixed Government, for it is compatible to be simplest in the world to have subordinate mixtures.

His Majesty acknowledgeth Monarchy to be so mixed Reply. with Aristocracy and Democracy in the exercise of some part of his power, that the conveniencies of all those forms of Government, without the inconveniencies of any of them, are obtained by such a mixture. But he denieth the mixture to be in the power itself, for the convenience which he saith it hath from Monarchy, is, that it is Governed by one Head. Where by one Head, he meaneth not one by mixture, but one single person, one pure and unmixed subject, that hath all power and authority alone. The Treatiser, I conceive hath purposely omitted his words, that his sense might not appear, but I shall cite them in the next Chapter, and shew the true intention and meaning of them. Now, whereas his Majesty hath acknowledged a mixture, to infer from thence, that he granted the mixture to be in the power itself, because the other kind is not a true, but an improper kind of mixture, is a strange and unusual way of argumentation. If his Majesty was in an error, and apprehended this to be a true mixture, which is not, all that can be concluded thereupon, is, that he misunderstood the true nature of mixture, not that he granted the mixture to be such as they contend for; when it is evident that a man denieth a thing *intermixt*, there is neither candor nor ingenuity in those, which will by consequences argue him to affirm it. Some accuse the Roman Catechists of Idolatry, because they affirm such things, as in their conceits seem by way of consequence to follow it, but no man was ever so void of ingenuity, as to dispute the question, whether Idolatry be lawful, and then cite those for Idolatry, who maintain it not.

to be lawful: In like manner some accuse Calvin of Tur-
 cisme; because he affirms such things, as in their conceit
 seem; by way of consequence to justify the practice and
 religion of the Turke; but no man was ever so unreason-
 able as to dispute the Question, *whether the Turkish Reli-
 gion be the true Religion*; and then cite him for an Author
 that maintained it to be true; because it is evident, that if
 those questions were propounded *in terminis*, the Roman
 Catholicks would deny Idolatry to be lawful; and Calvin,
 if he were alive, the Turkish Religion to be the true Religion,
 what consequences soever other men draw from their
 words. Yet the *Treatiser* dealeth in this manner with his
 Majesty; for although it be evident, that his Majesty de-
 nied, *in terminis*, the mixture of the English Monarchy
 to be in the power itself; yet he argues him by consequences
 to affirm it: this to the Antecedent. But, secondly, the
 consequent is also false; the mistake is in himself, not in
 his Majesty: Why is it no mixture, which is not in the
 root and supremacy of power? he answereth, *Though it
 hath a subordination of inferiour officers, and though the pow-
 ers inferiour be seated in a mixed subject, yet that makes it not
 a mixed Government; for it is compatible to the simplest in the
 world to have subordinate mixtures*: What if no govern-
 ment in the world be so perfectly simple as to exclude all
 subordinate mixtures? it doth not follow from thence,
 that a subordinate mixture is no mixture. I shall also
 deny the very ground and foundation of his argument;
 such subordinate mixtures, as are in the English Monarchy,
 are not compatible to the simplest government in the
 world; for where the Government is arbitrary and abso-
 lute, both in respect of power, and in respect also of the
 use and exercise of it, supreme governours can put forth
 all the acts of power and jurisdiction alone; they can make
 laws, raise taxes, and exercise their whole power, ac-
 cording to the full activity of it, without the concurrence
 of the other estates; and although they do often make
 use of their direction and assistance; yet this mixture in
 the

the exercise of power proceeds not from the constitution of government, but from their own voluntary election; choosing this as the most conducing means to obtain the ends of government. For although they may act according to the full activity of their power, yet they cannot act in person at all times, and in all places; nor is one man wisdom sufficient to meet with all the events and accidents of government; by reason whereof they are driven to seek a remedy against such inconveniences as would arise from these and the like causes; and if, when they find no better, they substitute others, and give them authority to act with them in the exercise of power, this voluntary mixture cannot have such an effect as to denominate a government mixed; because it depends upon the immediate will of the supreme governour, who may act without them, where and when he please; and whether he acts with them, or without them, the frame of government is still the same; for it is the constitution of a government that specificates it, and causeth it to be denominated mixed, or simple. There is a great difference then between such subordinate mixtures, and the subordinate mixture that is in the English Monarchy: those are mutable, uncertain, depending upon the will of the Supreme Governour; this immutable, certain, depending upon the constitution of the Government; for whether it was effected by original contract with the people at the first foundation of the Monarchy, or whether it was established afterward by the voluntary grant and concession of some of our Kings, or whether it was introduced by custom, the Government is now so constituted, that the King cannot make Laws, raise Subsidies, or exercise some other Acts of his Power, without the assent of the two other Estates: So that the very constitution of the Government is mixed in some respect, namely, in respect of the exercise of some Acts of Power, which happeneth not in Common-wealths where the Government is Arbitrary.

2. *Object.*

Pag. 38.

Reply.

Besides that which is here alledged, the Treasurer brings
 other Objections in his Reply: as Doctor *Fern.* against
 mixture in the use and exercise of Power, *Aristocracy and*
Democracy, saying he, *are Powers, not Persons, as well as Mon-*
archy: therefore a composition of these three must be all of Powers,
and indeed this Chintz of, a mixture in the exercise of
power is plain non sense; for a mixture in the use or exercise
supposeth a mixture in the principles of action, that is in the
very powers: a mixt act proceeding from a simple power, is such
stuff that I never heard before. and our *Author* most
 First he saith, that *Aristocracy and Democracy are powers,*
not persons, as well as Monarchy; and this he takes for granted;
 which is both an apparent fallacy, and a *delusion*; for
Monarchy, Aristocracy and Democracy are neither
 powers, nor persons; but forms of government equally
 relating to both; the words, according to their Etymolo-
 gies, noting persons as well as powers; and when these
 are mixed together, it is the mixture of persons, not of
 powers, that denominated a mixed form of Government;
 as I shall shew immediately. Secondly he saith, that a
 mixture in the exercise of power is plain non sense, for a mix-
 ture in the use or exercise supposeth a mixture in the princi-
 ples of action, a mixt act proceeding from a simple power is such
 stuff that I never heard. Here instead of Law, he bringeth an
Axiome, either of his own coining, or taken out of some
 Author that writeth *De causa & causis*, to confirm his
 mixture; such *Axiomes* are no authentical proofs, were
 they generally true, which for the most part they are not,
 but admit of divers limitations: It is a very difficult mat-
 ter to prove what kind of Government is established in any
 Common-wealth, by *Beda's Axiomes*, or the *Axiomes* of
 any other *Author*; it had been more reasonable whilst he
 was mixing the Rights of Majesty, if, in making his asser-
 tion good, he had mixed a little Law with his *Philosophy*
 and *Logick*. But as his *Axiome* is not authentical, so
 without divers restrictions, it is not true. A mixed act
 may proceed from a simple cause, the Sun doth by the
 same

same power that, resolve and harden, at the same time; for the virtub of natural Agents is diversly modified of the subject wherein it is received, and aceth variously according to the severall dispositions thereof. And yet if his *Axiome* were authentical, or true, it is not pertinent; the question is, whether the mixture of severall estates in the exercise of some acts of power be not a true mixture, sufficient to denominate a mixed Government? how doth it follow now that it is no true mixture, because a mixed act cannot proceed from a simple power? If that were true, yet a mixed form of Government may proceed from the mixture of severall persons and estates; for forms of government arise in acts. Besides, the Division of Government into simple and mixed, is made in respect of the Persons and Estates, not of the Power, which remains the same under all forms and changes of Government, and cannot properly & *per se*, but improperly & *per accidens* be said to be mixed; for it is mixed only *ad mixtionem subjecti*, when it is seated in a mixed subject, being otherwise the same that it is in a simple; and when a simple form of Government is changed into a mixed, or a mixed into a simple, the power suffereth not the least alteration, but is denominated simple or mixed, according as it is seated in a simple or mixed subject. This is the common assention of all Authors, who do generally teach the diversity of Common-wealths to arise from the diversity of Persons, their simplicity and mixture, from the simplicity and mixture of persons and estates; not from the diversity, or from the simplicity and mixture of powers. *Quoad imperium habet discrimina- tur species rerum publicarum. Signidem in quolibet Rep. de- prebendere est summam legibusque solutam potestatem; verum quoad eos penus quos imperium est, differentia reipublice forma- rum fieri debet, eoquo nomine aut Monarchicus aut Polyarchi- cus status est, Polyarchicus status aut simplex, aut vero mixtus existit.* Besold. tit. de Reg. legis. *Frederic. Tileman. Diss. Digest. in. libel. 8. v. 1.* We distinguish not the forms of Common-wealths by power, for there is a supreme power above the

Laws in every Common-wealth; but the difference ariseth from the person in whom the power is seated: and in that respect the state of a Common-wealth is either Monarchical, or Polyarchical: the Polyarchical state is either simple or mixed. Now where the several forms of Government are totally mixed, that is, where the mixture of the three Estates is both in the power, and in the exercise of it, there the simple forms of government are corrupted, and that which results out of their mixture and corruption is another form distinct from them all, which by Authors is generally called a *mixed Common-wealth*: this kind of government is always Polyarchical, such a mixture being incompatible to Monarchy. But where they are but partially mixed, that is, where the mixture of these three Estates is in the exercise of power alone, there the simple forms of government are not destroyed by such a mixture, but suffer only an accidental change. This is a light mixture in comparison of the other, but as great as is consistent with any of the simple forms of government, and as true a mixture as the former: which although it doth not totally corrupt, yet it doth manifestly alloy the simplicity of a government: for where several estates have interest by the constitution of a government in the exercise of power, the government is not so simple, as where one of the estates alone hath all the interest.

3. Object.

Thirdly, that power where the legislative power is in all three, is in the very root and essence of it compounded and mixed of those three: for that is the height of power, to which the other parts are subsequent and subservient: so that where this resideth in a mixed subject, that is in three distinct concurrent estates, the consent and concurrence of all must first, and none depending on the will of the other: that Monarchy is in the most proper sense, and in the very model of it of a mixed constitution: but such is the state of this Monarchy, as appears in the former question, and is self apparent.

Reply.

This Objection is soon answered by that which hath been said in the fifth Chapter: but because it is the prin-

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epar objection, I will more at large treat the Invalidity of it. First therefore I answer to the intention, that the concurrence of one or both the other Estates with the Monarch in the making and promulgation of Laws is no good colour or pretence, much less a sufficient ground, for such a coordination and mixture as is pressed by them: and though their assents be free, and not depending upon the will of the Monarch, yet that makes them no concurrence with him in the rights of Sovereignty. It is the common assertion of *Canonists*, *Civilians*, and *Schoolmen*, that it is to my knowledge contradicted by any, that the Legislative power is delegable, nor that such a concurrence is an argument of Supremacy, or of such a virtuality as they would infer out of it. * Some call it therefore upon the mixture, because it seemeth to destroy a simple form of government, and to make a mixture in the power itself, but doth not, though otherwise they acknowledge it to be such a mixture as doth rend the Supremacy thereof. *Grotius* is limited to this purpose, *in his de Legationibus, quod latet quodvis summi potestas compertit, nihil immittitur de jure summi quodvis, quod in Sobolis ditione cumulatius de amittitur, non privatur*. He speaketh this of Laws made by general conventions, whose concurrence, he saith, doth not in the least manner diminish the Rights of Majesty. Such a mixture of the three Estates hath been in other Monarchies, which all men acknowledge to have been absolute in respect of power. In the *Person Monarchy*, how absolute soever the other Estates had interest with the Monarch in the Legislative Power, as appeareth by that passage of *Darius*, wherein the Princes, Governors and other Officers of *Darius* sought to betray him by a Law. Then these *Presidents* and *Princes* assembled together to be King, and said unto him, King *Darius* live forever, all the *Presidents* of the Kingdom, the *Governors*, and the *Princes*, the *Counsellors*, and the *Captains*, have consulted together, and establish a Royal Sentence, and to make a firm decree, that whosoever shall ask a portion of any God or man for forty days, shall be put to death. King *Darius* answered

* Pannormit. cap. gravem de sententia excommun.

* Bertol. in L. omnes populi ff. de justitia & jure q. 2. princip. quast. unc. 5. num. 25.

* Suarez lib. 1. de legibus lib. 1. cap. 8 num. 9

* Besold. de jurib. Majest. cap. 2.

* Arnise doct. polit. lib. 1. cap. 8. De imperio summarum potestatum circa sacra. cap. 8. num. 11.

Can. cap. 6. vers. 7, 8, 9.

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into the deed of Law: Now, O King, Establish the decree and
 give shewings that it is not changed according to the form of the
 Modes and Persons which alter it not, wherefore King Darius
 signed the writing and the decree. These Princes, Governors
 and Officers of Persia, had the same authority in making
 laws: that the Lords and Commons have in England, yet
 were not subordinate with the King: They had *vetum Con-*
suetum and *Præsum* these words, have consuetudine to estab-
 lish a Royal Statute, include both an act of Counsel, and
 an Act of Authority and Jurisdiction. *Grotius* saith, they
 signed the Decree as well as the King, and that they had
 this authority by the constitution of the Government: And the
 sequel of the History doth imply as much, for had the Act been his alone, had he set out his Decree by
 way of Edict or Proclamation, he might have altered it
 himself as *Absalom* did the Decree he set out touching
 the destruction of the Jews: but being made by the as-
 sent of others who had a concurrent authority with him
 by Law, he could not alter it. I shall not need to instance
 in the Roman Empire, or in other Kingdoms, for it is
 generally known that such a mixture was in that, and
 hath been, and is, in most other Monarchies. And not
 onely whole representative bodies, but divers particular
free Cities have the same privilege: yet have not supreme
 authority. In our own Kingdome the Common-Council
 of every Incorporation have authority to make ordinances
 and constitutions within their own Liberties, for the good
 order and government of their body. The Inhabitants
 of every Parish have authority to make Bylaws and Or-
 dinances amongst themselves for their own profit, where
 they have custome for it: and for the publick good, where
 they have no custome. *Coke* part. 3. in the Chamberlain
 of London's Case, tit. Cases de Bylawes & ordinances. In-
 habitants dans ville, faict aucun custome payent faire ordi-
 nances ou Bylawes pour réparation del Eglise, ou d'autr. haut roy,
 ou d'autr. tierce chose, que est par le bien publicque generalment,
 et insiel cas le greigneur part tier, tous faire aucun custome.

Vide

out the conscience of the people, as well as of the King. The whole latitude, the form of the Monarchical power is not jointly in the three Estates, but the power only of making certain and perpetual Laws; and when such Laws are made, it is the King's authority that gives life unto them, they having otherwise no power to oblige the conscience, then as they are his Commands. This hath been sufficiently confirmed already; yet I will here further illustrate the truth by the testimonies of *Breton* and the Author of *De Fleta*, who applying that passage of the Civil Law, *Quod Principi placet legis habet potentiam*, to the King of England, say: *That clause ought not to be understood of any thing that is solely presumed to be his will, but of that which is justly determined upon good advice and deliberation by the Counsel of his Magistrates. Regis Auctoritatem possidente; the King giving it Authority, and confirming it for a law: and from hence by an argument *ad inductum*, they shew that the King ought not to do unjustly. *Gum ipse sit iustus, iure non debet in alium iniquum nasci occasio, unde iura negantur*. When he himself is the Author of the Law, injustice ought not to spring from the same fountain from whence the Law doth spring. The Legislative power is in the King, therefore as in its spring and fountain, and in the other estates by derivation; they have right and victory in the use and exercise of some parts of the power, and may assent or dissent what shall be made a Law, but the power itself is radically in him.*

Now the Legislative power is either *Archimonical* or *preceptive*; the *Archimonical* power is that which layeth the materials of a Law, and it consisteth in two things: First, in determining what is fit, *conducit* or *necessary*; they to whom this power is committed have no jurisdiction granted them, but only an office and employment to deliberate and consult. Secondly, in declaring and promulgating that to be actually made a law and enacted, which upon consultation is thought to be fit, *conveniens* or *necessary*; they to whom this power is committed, have

• Lib. 3.
cap. 9.
• Lib. 1.
cap. 17.

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a jurisdiction granted them to define authoritatively what shall be a law: The preceptive power is that which maketh the law sacred and inviolable, and which giveth it force to oblige the conscience. It is evident by that which hath been said, that not the preceptive, but the exercise only of the *Archiepiscopal* power is committed to the two Houses, they have *volunt confultationem & decisionem* both authority to consult what is just, convenient, or necessary, and also to decree what shall be made a law: but this authority is derived from the King. The Treatiser in his reply to Dr. Ferrierneth to be unsatisfied with this answer, and doth there dispute against it after this manner, *My second objection* faith he, *for radical mixture*, it from the Legislative power being in all three: He answers, that phrase is satisfied and explained by that concurrence and consent in the exercise of supreme power. *It seems that invention of his must serve all turns*, is a legislative power satisfied by a bare powerless consent? I demand, is that consent causal and authoritative? or merely consiliary and unauthoritative? And whereas I prove that they have an enacting authority by that reserved and set clause in the beginning of Acts; Be it enacted by the King's most Excellent Majesty, and the authority of the Lords and Commons assembled in Parliament. He tells us a vote and power of assenting is a great authority, Enquire not how great it is: I ask whether that be all; whether that clause, which as expressly in words can, ascribes an enacting authority to them; be satisfied by such a power of assenting. Here are many words heaped together, yet not so much as one that toucheth the present controversy: the question is not, whether the two Houses have authority, nor yet whether they have an enacting authority: it is evident they could not sit as Judges in the Court without authority; nor enact without an enacting authority: but the question is, first, whether their enacting authority spoken of in the foresaid clause be only a power of assenting that such or such a law shall be established, or a power that commandeth and giveth life and vigour to the Laws. Secondly, whether this power be radically in them-

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7. H. 7. 14. &
31. H. 7. 25.

Lambert's
Archæon
§. 271.

*Selves, or derived from the King. To the first I say, that it is only a power of assenting: for it hath been resolved by the Judges that this clause which he allegeth. *Be it enacted by the King's most Excellent Majesty, and the authority of the Lords and Commons assembled in Parliament,* is no more in substance and effect than that which was used anciently, *The King, with the assent of the Lords and Commons, shall enact*: the words *assenteth* and *enacteth*, being equivalent in this case. And to the second I say, that their authority is derived from the King, not radically in themselves: For although this Treasurer knows not, or will not seem to know how to put a difference between having an enacting authority, and having the legislative authority radically in themselves, yet the Judges did, and others do: For they may enact by a delegate authority, that is, by having the use and exercise of the legislative power committed to them so far as is necessary to that act, although it be not radically in them as their own. But now the Treasurer speaketh not a word to either of these points, but sheweth only that they have an enacting authority, which is a point not controverted. For their power of assenting, and laying the materials of a law, is an enacting power, although their activity be not equal to the King's. Subordinate Agents, that are but instruments of another, and work by a derived power, when they concur with the principal and supreme agent have their causality in producing the effect. And therefore whereas he demandeth whether their consent be *causal and authoritative*, or merely *consiliary and nonauthoritative*? I answer, that it is as causal and authoritative as if the legislative power were radically in themselves: for he that worketh with another man's tools, is as much the cause of the work, as if the tools he useth were his own: whether the authority by which they coast be the King's, or radically in themselves, the effect will be the same.*

It may be further objected, that these words. *Be it enacted by the King's most Excellent Majesty, and the authority of the Lords and Commons assembled in Parliament,* do imply dis-

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distinct authorities, the authority of the King, and the authority of the Lords and Commons, for the addition of these words, *And the authority of the Lords and Commons*, is improper, if Laws be enacted by the King's authority alone. To this I answer; First, that there is nothing more frequent when the King acteth jointly with his subordinate Ministers, than to ascribe a concurrent authority to those that act with him, although their authority be derived from him; for although his authority cannot be separated from him *privative*, as hath been said, yet *cumulative* it may, that is, it may be inherent in his own Person, and yet be in others too, as the light of the Sun is inherent in its own body, and yet multiplied and diffused through the world: Now when it is separated from him after that manner, it is commonly called their authority to whom it is committed, because they are the seat and subject of it. What light which the Stars derive from the Sun, is usually called the light of the Stars, and the Stars are said by the means thereof to concur with the Sun, and to have a causality and operation upon inferior bodies; it is no impropriety to say, The light of the Sun and the light of the Stars enlighteneth all the world, although the light of the Stars be derived from the Sun. But secondly, what if it be granted that the Lords and Commons have authority of their own distinct from the King's authority? To speak my own opinion freely, I think they have a distinct authority, I mean not Supreme authority, but an authority derived from the King, yet distinct from his. He that hath but a delegate power, if it be committed to him for term of years, *term of life* or perpetuity, he doth by such a grant acquire an estate in the said power, and an authority distinct from his that gave it him. As in an Estate of Lands, wherein a man hath a perpetual right in fee-simple, or in fee-tail, his right is distinguished from the King's right of whom he holds it, the King having the demean of the Land, and the other the demean of the Fee: so it is in an estate of power and authority; if the King granteth an estate of power, authority,

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and jurisdiction, in fee simple, or in fee tail, for term of years, term of life, or perpetuity, their rights in the said authority are distinct: the King hath the *Demean* of the *Power*, the other the *demean* of the *Use*, the King hath *Dominium directum*, the other *Dominium utile*. And this is the present case; the Legislative power is wholly and intirely the King's, yet the Lords and Commons have a perpetual right in the use and exercise of some part thereof, so that the King cannot actually make a Law, except they will also use the authority committed to them, it being in their power to assent or not assent, to use or not to use, the said authority. There is an authority then in the Lords and Commons distinct from the King's authority, which must necessarily be put forth in the making of Laws, yet not supreme, but subordinate to the King, derived from him, and depending upon him. But this is more than can be forced out of the foresaid clause, and I think more than is intended in it.

4. *Object.*

Fourthly, That Monarchy in which three estates are constituted, is the end that the power of the one should moderate and restrain from excess the power of the other, is mixed in the root and essence of it, but such is this as is confessed in the answer to the said propositions.

Reply.

The *Antecedent* and *Consequent* are both false: The creation of Courts, wherein the Judges have authority to proceed according to law, notwithstanding the personal and arbitrary Commands of the King, hath always been esteemed a strong and effectual means to restrain and moderate the excesses of Monarchy: Yet the Judges cannot be inferred from hence to be coordinate with the King in the rights of Sovereignty, or to have a mixed power with him in the Government of the Kingdom. But the *Consequent* hath neither appearance nor shadow of truth: Parliaments were ordained, that the other estates might consult with the King about the weighty affairs of the Kingdom as often as he thought it needful, and agree to such Laws as should be found profitable and expedient: not that they should

should quarrel and contest with him: It is true, the two Houses do for the most part in time of Parliament gain an opportunity to have Grievances redressed, because they may otherwise deny the King the assistance he desires; but they have no authority radically in themselves to redress them, or to restrain and moderate his excesses by force of arms; nor were they constituted for that end: If it should be granted that Parliaments are by original constitution and agreement, and that the people have always given what Laws they pleased to the *Conquerour* as often as the Crown hath been obtained by *Conquest*; yet in probability they could have no such end as this *Treatiser* imagineth, or to abuse the people, seemeth to imagine: had they purposed the three estates, should moderate the excesses of one another in Parliaments, they would never have granted the King authority to dissolve them at his pleasure, whereby he might easily avoid and frustrate their intention. Besides, Parliaments are so tempered, as it is impossible to attain to that end by such a mixture; one of the estates, or any two of them, having no authority to make an Act of Parliament without the third, which way can they moderate the excesses of one another by such acts further than the exorbitant estate shall be willing to be moderated? Nor doth his Majesty, as he imputeth to him, any where confess, that *three estates are constituted in this Monarchy, to the end, that the power of one should moderate and restrain from excess the power of the other*; he should therefore have cited his words, that the Reader might have judged of their sense.

These are the objections, brought by the *Author* of the *Treatise of Monarchy*, which are partly taken out of the fuller *Answerer*, and partly invented by himself. In answering them, to avoid needless Controversies, I have granted, that a mixed form of Government is possible, although I be not ignorant that a mixed Government is but the invention of later times, and reputed impossible by Authors of chiefest note. I have admitted also, that the King, the Nobility, and

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Part 1. cap. 4.

Befold.
Synopf. Po-
lit. doct. lib.
i. cap. 6.
num. 4.

Clapmar.
De arcan.
Rerump. tit.
de simulacris
Imperii
cap. 3.
Vindication
of the Tre-
atise of Mo-
narchie
fol. 39.

and Commons, but the three Estates of Parliament, al-
though I know this contrary to the Statutes, wherein the
three Estates of Parliament are declared to be the *Clergy*,
the *Nobility* and the *Commons*. I have insisted the longer
upon these Objections, because the Author of the foresaid
Treatise is esteemed by some the chief Advocate of that
side: I intend not to derogate from the Author, who I pre-
sume would have written more substantially, had the case
been capable of defence; yet if a man may gaze at his hu-
mour by that Treatise, he seemeth to be much more inclined
to assert new principles, than to shew reasons how they
should be maintained. That he might illude the Laws
wherein the Government of England is declared Monarchi-
cal, he layeth down divers Positions to this effect. That
where a *transcendent interest*, or *primity of share*, is in one
man, it is sufficient to constitute a Monarchy, although the
other estates have their shares also in the rights of Sove-
rignty, and supreme Authority; but he doth not so much
as offer to prove this either by law or reason, although it be
contrary to the Common received principles of other Au-
thors, who teach, that such a *transcendent interest* or *primity
of share* cannot make a Monarch. For such a *prebeminence* is
in some persons in the most popular States, as in the Duke-
doms of *Venice* and *Genoa*, where the Dukes have a *trans-
cendent interest*, and *primity of share*, above the rest, and are
Ratores & executives summique magistratum, having the gu-
bernative, and executive power in their hands, and excel-
ling all other in dignity and authority: Such prebeminences
therefore are reckoned amongst the *Simulacra imperii Regii*,
being but images and shadows of Kingly government where
full and intire power is wanting. Again, that he might il-
lude the Laws wherein the King is declared to be *Supreme*,
he saith that a *transcendent interest*, or *strict Christy*, is
sufficient to make good that title; yet he endeavourth not
to confirm this by one instance, although it be contrary to
the received signification of the word when it hath reference
to power and jurisdiction: for in Law, when a Governour

or Ruler is called *Supreme*, the word *Supreme* is always opposed to *subordinate*, and not to *less*: amongst Lawyers he shall often find power and jurisdiction divided into *Supreme* and *Subordinate*, but never into *Supreme* and *less*, if that which is *less* be also *Supreme* and *independent*. But yet if his new principles were granted to be true, he cannot by such shifts, in any plausible manner evade the Statutes, wherein the King is declared to have intire, whole and plenary power, and to be so supreme, that all authority is derived from him, and wherein it is declared that all obedience is due to him, and to him only: Will a transigent interest make good all this? Is a Primity of share intire, whole and plenary power? Can all authority be derived from him that hath but an utmost Chiefly? Is all obedience due to one of the Estates, where the mixture is in the power it self, and supreme authority radically in the other? Surely if the other Estates have Power, Allegiance and Obedience is due unto it; they had as good challenge no power, as challenge no obedience.

C H A P. IX.

Divers general Objections taken from the Testimony of his Majesty, Bracton and Fortescue, together with the Precedents of Edward the Second, and Richard the Second, answered.

BESIDES the former Objections, they urge the Testimony of his Majesty, of Bracton and Fortescue; to which I answer in general, that the decision of this controversy depends upon Law, and not upon the bare words and authority of any. The words of Lawyers are to be regarded no further than they are approved by Law; for they are but men, and may be incited by passion or private interest to speak or write what they ought not. I have therefore purposely my self omitted all proofs of that nature, and although I could produce a Catalogue of Lawyers longer than a Genealogy to confirm the King's right, yet I have cited none but such as prove what they say by the Laws, except only those that are cited by themselves, which I had also omitted, but that I desire to make it evident how far those Authors are from favouring their seditious opinions. And if his Majesty out of a desire to avoid the effusion of blood used such gracious expressions as were most likely to prevail with

with the people, and consolidate their minds, they ought not in equity to prejudice the Rights of the Crown, although he had abdicated therein, some part of his authority, and granted things destructive to his own Prerogative. I have given this general answer, not because his Majesty, *Bradon*, or *Fortescue* have affirmed any thing in favour of their right, but to shew the Insufficiency of this objection in case they had; but the truth is, they have notoriously perverted the meaning of his Majesty, as also the meaning of *Bradon* and *Fortescue*: And although I cannot imagine any man so senseless as to believe his Majesty ever subscribed to their judgment; or any that have perused the Works of *Bradon* and *Fortescue* so void of understanding as to think they were ever abettors of such phantasies: yet that they may not exclaim for want of an answer, I will more particularly examine what they say.

Out of his Majesty's Answer, to the nineteen Propositions, they alledge this passage. *There being three kinds of Governments amongst men, absolute Monarchy, Aristocracy and Democracy; and all these having their particular conveniences and inconveniences, the experience and wisdom of your ancestors, hath so moulded the mix of a mixture of these, as to give to this Kingdom (as far as humane prudence can provide) the conveniences of all three, without the inconveniences of any one, as long as the balance hangs even between the three estates, and they run evenly on in their proper channel (begetting verdure and fertility, in the meddows on both sides, and the interflowing of either on either side, cause no deluge or inundation) the ill of absolute Monarchy is Tyranny; the ill of Aristocracy is Faction and division; the ill of Democracy are Tumults, violence and licentiousness. The good of Monarchy is the uniting a Nation under one Head, to resist invasion from abroad, and insurrection at home; The good of Aristocracy is the consultation of Council in the most private of a House for the publick benefit; The good of Democracy is liberty, and the courage and industry*

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industry which liberty requires—the Lords being invested with a judicatory power, are an excellent screen and bank between the Prince and People—by just judgments to preserve the Law, since—therefore the power legally placed in both Houses is more than sufficient to prevent and restrain the power of Tyranny—since to the power of punishing, which is already in your hands according to Law.

Thus far, and in this manner, his Majesty is cited by the fuller Answerer, who that he might the better wrest his Majesty's Speeches to his own purpose, hath made many Transitions from one place to another, mutilating the sense, and leaving out that which should have made his Majesty's meaning apparent. And from these words he maketh diverse deductions: his first deduction is, that his Majesty granteth the Government of England to be mixed in the power it self; this he inferreth, because his Majesty acknowledgeth a mixture, and it is no true mixture he saith, which is not in the very Supremacy of power it self.

1. Deduction
Answer to
Doctor Fern.
Pag. 1.

Reply.

This is answered in the former Chapter: I shall here only desire the Reader to take notice, that his Majesty's true and real intention is such as I have there expounded; for these words, *The good of Monarchy is the uniting a Nation under one Head*, are a perfect Commentary upon the former, and do clearly manifest, that his Majesty asserted not the Head and Seat of supreme power to be a mixed subject, but granted a mixture in the administration of power alone.

2. Deduction.
Reply to Do
ctor Fern.
Pag. 34

His second deduction is, that the King granteth the power of interpreting, and giving final judgment of the sense of Law, to be in the two Houses; this he concludeth to be his Majesty's meaning, when he said, *The Lords being invested with a judicatory power, are an excellent screen and bank between the King and People by just judgments to preserve the Law.*

Reply.

The Lords may have a Judicatory power, and be as a bank and screen between the King and People, without the

the power of interpretation, and giving final judgment of the sense of Law: It is sufficient that they have a power to interpret Law *judicially* in such cases as are cognisable in the Court, although they have no power to interpret it *authoritatively*, which is a Prerogative belonging to the King, calling his Judges unto him. But the best of all is, that he inferreth from the words abovesaid, *with the Houses* to have a power of declaring Law; for whereas his Majesty in the Premises speaks only of the House of Lords, by a trick of more than *Presbyterian* *Legerdemain* he hath juggled the House of Commons into his inference.

His third deduction is, that his Majesty granteth the two Houses a power of forcible resistance in case they should judge his actions tyrannical and unjust; this he collecteth out of these words, *Since... therefore the power legally placed in both Houses is more than sufficient to prevent and restrain the power of tyranny.* This he says cannot be made good, unless the Houses have a power of resistance; for tyranny cannot be otherwise restrained.

It is evident that his Majesty speaks not in this place of a forcible, but of a legal way of restraint; *Id possit quisque quod jure possit*, Every man is said to have a power to do that which he can do by law, although he may be hindered in the execution of it. His Majesty grants them not an absolute power of restraining tyranny, but let that be taken in which goeth immediately before, and his words will bear no other sense, but that they have a power of restraining it, so far as humane prudence can by lawful and just ways provide. Neither is forcible resistance a more certain means of restraining tyranny than other legal ways less correlative, if the Houses had a power of resistance, they are not sure always to prevail; it is better therefore to tolerate a mischief, than to use a remedy which is worse than the disease, and uncertain too. But they have by law a double power, as effectual as forcible resistance, they may inflict exemplary punishment upon evil instruments, where-

by others may be afraid to take upon them such employments; and they may refuse to give the King Subsidies and other necessary assistance, if he refuseth to moderate his excesses. If a tyrant and his evil instruments be strong, and in no necessity, were it lawful to resist, and to levy war against them, the success would be doubtful, the damage certain; and if the best happen, they should but cure the Common-wealth of an *Ague* by giving it the *Plague*: But if he be necessitated either by insurrections, or otherwise, to crave the assistance of his Subjects, they shall then have liberty to execute their power upon his evil instruments, or to make use of any other means the Law hath put into their hands. Where Tyranny reigns, such opportunities will in a short time assuredly be offered; the best Princes cannot always suppress rebellions by the help of their loyal Subjects, how much less can Tyrants be able to do it without them. Such Exigencies being considered, I say the power legally placed in the Houses is more than sufficient to restrain Tyranny, without a power of resistance.

2. *Obje^{ti}.*

Lib. 2.
cap. 16.

Secondly, They alledge the testimony of *Bracton*, *Rex habet superiores Deum. Item Legem per quam factus est Rex. Item Curiam suam, videlicet Comites et Barones*. That is, *The King hath God his Superior, and the Law by which he is made King, and his Court, namely, his Earls and Barons*.

Reply.

Some think that *Bracton* speaketh not this himself, but supposeth only that some might make such an Objection: for these words, *Sed dicere poteris quod*, which go immediately before, seem to agree with that interpretation, and to be applicable to that which is here cited, and to all that followeth in the same Section. But because the words may also admit of another construction, and because I desire to satisfy the Reader in every regard, I will a little more strictly inquire into the sense and meaning of them, and shew the insufficiency and weakness of this Objection, if they could be proved to be his own; for it is evident

evident that these words cannot relate to any coercive power, or civil jurisdiction the Earls and Barons have over the Person of the King, but to a directive power alone, which their Counsels ought to have over him in governing of the people. For as both ^a Divines and ^b Lawyers usually distinguish, one may be said to be superiour to another *per potestatem coercitivam*, in respect of a coercive power, or civil jurisdiction he hath over him, by virtue whereof he may command what he please within the extent of his jurisdiction, and force him to obey it, this is a Legal power and superiority, which none but Magistrates have over their Subjects: or *per potestatem direttivam*, in respect of a directive power he hath over him, by which he ought in Conscience to be ruled, although he cannot by Legal process be forced to obedience; this is a Moral power or superiority, which Subjects may have over their Magistrates: for in this regard Masters are superiour to their Scholars, Counsellors superiour to those that are guided by their Counsels, and the Law superiour to the Law makers. *Bracton's* scope in this place (if these words be spoken positively by himself, and not as a supposed Objection) can be nothing else but to assert the Earls and Barons in his Court to be superiour to the King *per potestatem direttivam*, in respect of the directive power their Counsels ought to have over him, which although they be no Legal Commands, and cannot therefore civilly oblige him to Obedience, yet they do morally oblige his Conscience, when he is convinced that they are just and necessary for the Government of the Kingdom. These words cannot in any other sense be reconciled to that which he saith in other places, who when he speaketh of this Subject, doth every where resolve the contrary; if the Earls and Barons should be interpreted here to be his superiour in respect of a coercive power and civil jurisdiction, whereof the places above mentioned are sufficient instances; to which I could yet add more, if I thought it needful. But it would be superfluous to illustrate the

^a Aquin. 1.
Quæst. 96.
art. 5.
^b Cabedo-
part. 2. de-
cif. 78.
Num. 1.
Navar. in
Rub. de ju-
diciis num.
100.

terpret this place by other, when the words considered by themselves imply no more: for he maketh no distinction of Superiority, but calleth God, and the Law, and the Earls and Barons in his Court, superiour to the King after the same manner. Now it is evident that God in this place is said to be superiour to him, in respect of the directive power his Law hath over him; for although God hath *de jure* a coercive power and jurisdiction over Kings, and shall *de facto* after their death dispose of them as their Judge, and in this life also doth often restrain them by his secret judgments, yet *Bracton* speaketh not in this place (as will appear immediately when the whole and intire period shall be cited) of either of those kinds of jurisdiction, but of giving present and open judgment upon the King's Fact, and upon his Charter, which is a jurisdiction that he exerciseth not, but giveth his Law only for direction, by which all Princes ought to be regulated, both in granting their Charters, and in the whole administration of their power. It is also clear that the Law of the Land is said to be superiour to him, in respect of the directive power of them, having otherwise no force or influence upon him: *Bracton* therefore meaneth that the Earls and Barons in his Court are superiour to him in the same respect, and not in respect of any jurisdiction they ought to exercise over him. But if we look upon the coherence of these words, and their dependance upon the precedent and subsequent matter, *Bracton's* intention will more fully and easily be discerned: I will therefore set down as much as is necessary to the present purpose, and explain every clause of it, and shew the relation and connexion one thing hath with another, and let the Reader judge whether this testimony of *Bracton* doth not strengthen the King's Cause, and might not rather be alledged for him than against him. *Nec fallam Regis nec Chartam potest quis judicare, ita quod factum Domini Regis irritetur. Sed dicere poterit quis quod Rex Justitiam faciat, & bene, & si hoc, eadem ratione quod male, & ita imponere ei quod injuriam emendet,*

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*omnibus, ne incidat Rex & iudicium in iudicium, videntur
Dei proper injuriam. Rex autem habet superiorem Deum. Item
legem per quam salus est Rex, item curiam suam, videlicet
Comites & Barones, qui Comites dicuntur quasi socii Regis,
& qui habet socium habet Magistrum, & ideo si Rex fueris
sine fratre, i. e. sine lege, debent ei fratrum ponere. That is,
No man may judge of the King's Fact or his Charter, so as to
make void the fact of our Lord the King. But some may say
the King hath done justice and well, and if so, by the same
reason that he hath done ill, and impose upon him to amend the
injury, lest he and his Justices fall into the judgment of the li-
ving God for the injury. But the King hath God his Superior,
and the Law by which he is made King, and his Courts, namely
his Earls and Barons, for they are called Comites, i. e. being
Companions to the King; and he that hath a Companion, hath
a Master; and therefore if the King be without a bridle, that
is, without Law, they ought to put a bridle upon him. If this
passage be well considered, it will be clear that Reason in the
words alledged, collecteth not the Earls and Barons superiour
to the King in a civil and legal, but in a moral regard
alone.*

First he saith, No man may judge of the King's Fact, on
his Charter, so as to make void the fact of our Lord the
King. Now can the words alledged agree with this, if
their exposition be admitted? How can the Earls and Ba-
rons in his Court be superiour to the King, in respect of a
coercive power or civil Jurisdiction, when they cannot
judge his Charter or his Fact? No man can have a coercive
power or civil jurisdiction over another, but he hath au-
thority to judge him according to Law, and to force the
execution of his Sentence.

Secondly he saith, But some may say the King hath done
Justice, and well; and if so, by the same reason that he hath
done ill, and impose upon him to amend the injury, lest he and
his Justices fall into the hands of the living God for the injury.
But the King hath God his superior, and the Law by which
he is made King, and his Courts, namely, his Earls and Barons.

Having

Having declared what power the Earls and Barons have not over the King, here he declareth what power they have. In case justice be not duly administred; there are some, he saith, which may advertise him of it, and impose upon him to reform what is amiss; and those he declares to be the Earls and Barons in his Court, who, as well as God, and the Laws of the Realm are superiour to him; that is, are superiour to him in the same manner, namely, by a directive power. For he saith, not that they should by constraint, but by admonition impose upon him to amend the injury, using this reason, *lest He and his Justices fall into the hands of the living God*, according to that which he saith in the place before quoted, *Satis sufficit ei pro peccato quod Dominum respectet ultimum.*

Thirdly, he saith, *For they are called Comites, or being Companions of the King; and he that hath a Companion, hath a Master.* Here he giveth a reason why the Earls and Barons may be called his Superiours, namely, *because they are his Companions; and he that hath a Companion, hath a Master.* This reason holds good if he endeavoureth by it, to prove them his Superiours in respect of a directive power, and moral superiority, but is ridiculous if he should endeavour by it, to prove them his Superiours in respect of a coercive power or civil jurisdiction: for every one cannot be Superiour to his Companions, in respect of jurisdiction, and be a Liege Lord, or Legal Master, over all the rest: But every one may instruct, counsel and direct all his Companions, and be a Moral Master over them; in that respect all Companions may be mutually one anothers Masters.

Fourthly, he saith, *And therefore if the King be without a bridle, that is, without Law, they ought to put a bridle upon him.* This inference which he maketh out of the former words doth also confirm that Bradon calleth them not his Superiours, in respect of a coercive power, or civil jurisdiction; for because they are his Companions, and

so in a moral regard his Masters, they ought therefore, he saith, *if he be without a bridle, to put a bridle of the Law upon him*; This bridle then must be a bridle of Law, and not a bridle of their own Ordinances; not a bridle of force, but a bridle of admonitions, counsel and advice; they have no other means but such by Law to bridle the King, if at any time he breaks out into violent and illegal courses. This is the Scope of *Bracton*, as is evident by the whole coherence and connexion of the matter; who was so far from allowing such fond conceits and imaginations as they seem to suppose; that the contrary runs in one constant vein through all his book: if they regarded the authority of *Bracton*, they would soon lay down their arms, and sue to his Majesty for a Pardon.

Thirdly, They alledge the testimony of *Fortescue*, who Fol. 25. speaking of the King of England, saith, *Principem ne dum Regalis sed & Politici sui populi dominatur*. That is, He governeth his People not only by Kingly, but also by Politick Power.

Fortescue implyeth in these words, That the King ought not to make his Will, but the Laws the rule of his Power; not that others are coordinate with him in the rights of Sovereignty. For power is either *Despotical*, or *Politick*. *Despotical* power is Kingly power not moderated nor restrained by humane Laws and Constitutions: *Politick* power is Kingly power limited and restrained by humane and politick Laws. Now *Fortescue* saith, That the King's power is not merely *Despotical* and *Regal*, but *Politick* and tempered by Law; and his intention is to shew the difference between the Common Laws of England, and the Civil Laws: The *Emperour* after the power was translated to him from the Common-wealth by that Law which in the *Digest* is called *Lex Regia*, until the custome of making Laws by the assent of the people took place again, might command what he pleased. *Quod Principi placet legis habet vigorem*, is a part of that Law: but the King of England, he saith, cannot altogether govern his people by such a power,

Reply:

Arist. Politic.
c. 1. & 2.

power, but is obliged to rule them according to the tenour of the *Politick* Laws and Constitutions of the Kingdom: so that *Politick* Power is here opposed to Kingly Power, taken in its greatest latitude, and not to Kingly Power moderated and restrained by Law. But how doth this concern the case in hand?

4. *Object.*

Fourthly, they alledge *Precedents*: *Parliaments*, they say, have exercised a *supreme* power over the Crown of England itself, to transfer it from the right Heir, and settled it upon whom themselves thought meet to elect for their King. They cite two Kings which were deposed, *Edward the second*, and *Richard the second*, and then conclude, that those *Parliaments* which have exercised such jurisdiction over them must certainly be above them, and the highest *Sovereign* power.

Reply.

Coke instit.
part 2. tit.
treason.

The *Deposition* of those Kings hath been resolved *Treason* by all the Judges of England; and yet if it had been legal, the *Precedents* are impertinent, for those Acts were confirmed by the Kings themselves, and could never have been esteemed Acts of Parliament without their own assent.

CHAP. X.

Objections made against the King's Supremacy in Particular, by Mr. Bridge, the Reverend Divines, and Others, answered.

They have yet other Objections whereby they endeavour to prove that the Particular Rights of Sovereignty are divided from the King, and placed in the two Houses. And first touching the *Militia*. Mr. Bridge and the Reverend Divines, have found a device how the Parliament may make use of *that*, and levy War against the King by his own authority. They say, as Judges they may send out Messengers or Sergeants at Arms for his evil Counsellours; and in case they refuse to appear before them, fetch them in as Delinquents by force of Arms: this is the sum of their Objection; but I will set it down in their own terms. Suppose, saith Mr. Bridge, a man be complained of to the Parliament for some notorious crime, it is granted by all, that the Parliament hath a power to send a Sergeant at Arms for him; and if he refuse to come, that Sergeant at Arms hath a power to call more; and if the Delinquent shall raise twenty, or thirty, or an hundred men to rescue him, then the Parliament hath power to send down more Messengers by force to bring up the Delinquent; and if they may raise an hundred, why may they not upon the like occasion raise a thousand, and so ten thousand? And again in his answer to Doctor Ferri's reply. If the Parliament may send one Sergeant at Arms, then twenty, then an hundred, then a thousand.

Mr. Bridges
Objection.

Reply.

13. R. 1.
Cap 6.The Reverend
Divines ob-
jection.

This I confess is a subtle invention, for there can be by Law but thirty *Sergeants at Arms* at the same time within the Realm; now if Mr. Bridge can shew a way how out of thirty *Sergeants at Arms* an Army of a thousand, or ten thousand may be raised, he shall be worthy to have a Statue erected to his Memory.

The Reverend Divines have in substance the same Objection, saying only they are not so punctual for point of Law as to have their Army consist of *Sergeants at Arms*; and they alledge a case in Law to justify that way of proceeding. Supposing, say they, the power of calling and dissolving Parliaments wholly in the King ordinarily; yet there may be such power in them so long as they do sit, to command Arms to be raised for the suppressing of any Delinquents, maintaining themselves with Arms even under the colour of the King's authority, which I thus make good: If there be any such kind of power in the very Judges in their Courts at Westminster, for the whole Kingdom, and in their several circuits for the shires they sit in, although themselves are made Judges at the King's will merely, and put out ordinarily at his pleasure, and they can neither keep Offices at any time, nor keep any Town any where, but when and so long as the King pleases to give commission: If (I say) there be such a power in the Judges, and even in one of them, then much more in the whole Parliament, which is unquestionably and undoubtedly the highest judicature in the Kingdom, and hath most power during their sitting: Now that such a kind of power is in the Judges, I appeal to experience in the case following. A private man hath a suit with the King about Land or House, and the like, the King hath possession, and some Officers at Tenant of his holds is for the King, the Judges having heard the Cause, give sentence for the subject, assigne him to have the possession delivered him by the King's Treasurers Officers, he refuses and arms himself to keep possession still, upon this, after due summons and process of Law, a riot of rebellion shall grow against the affect of the King's, even though he should pretend to keep possession still, by command and com-

sent from the King, and the Sheriff shall be commanded to raise arms, and the whole posse Comitatus if need be so, to apprehend the Officer of the King's, and bring him to sundry punishment for resisting the King's authority in his Laws. There now issuing of Arms by the King's legal authority, against the King's Title, and the King's Officer notwithstanding any pretended authority from the King's personal command, and that Officer hath a Writ of Rebellion shut against him, and shall be punished by Law, for offering to resist the Law upon any pretence (ask the Lawyers whether in sense this be not the Law, and ordinarily practised, save that the King do not command the contrary, but whether that would hinder Law or not?) the Parliament may then in case of necessity raise arms against the King's personal command for the general safety, and keeping possession (which is more necessary than the hope of regaining) of the Houses, Lands, Goods, Liberties, Lives, Religion and all, and this by the King's legal Authority, and resistors of this are the Rebels in the Law account, and not the insurgents so employed legally, though with Arms by the Parliament.

For matter of fact, it was themselves that withheld Do-Reply.
linquents from a legall tryall, the King detained none; but when divers Members of the Parliament were assaulted in the streets, driven from the House, defamed by Libells, and Justice not permitted to take place, it was the office of the King to protect them in their Rights and Liberties, and to force the due execution of the Law: and if he refused to yield up those to their injustice which assisted him, this was not to keep Delinquents from their tryall, but to protect his loyall Subjects according to law: this for matter of fact. But for matter of Right, suppose the King had taken upon him unjustly, the Law doth not permit his Counsellors to oppose him, or to call any in question that are assistant to him: when the King taketh up arms, they which attend upon his Person, or are employed in other places about the same service, may not be molested or troubled by process of Law, either in Parliament, or in any of his Courts, as it declared and enacted by a Statute made the eleventh year of Henry the seventh.

11H.7. cap. 1.

The King, our Sovereign Lord, calling to his remembrance the duty of Allegiance of his Subjects of this his Realm; and that they, by reason of the same, are bound to serve their Prince and Sovereign Lord, for the time being, in his Wars, for the defence of him and the Land, against every rebellion, power and might raised against him, and with him to enter and abide in service, in battail, if case so require, and that for the same service what fortune ever fall by chance in the same battail against the mind and will of the Prince (as in this Land, sometime passed, hath been seen) that it is not reasonable, but against all Law, Reason and good Conscience, that the said Subjects going with their Sovereign Lord in War, attending upon him in his Person, or being in other places by his Commandment within this Land or without, any thing shall lose or forfeit for doing their true duty and service of Allegiance. It be therefore ordained, enacted, and established by the King our Sovereign Lord, by the advice and assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and authority of the same, that from henceforth no manner of person or persons whatsoever he or they be, that attend upon the King and Sovereign Lord in this Land for the time being, in his person, and do him true and faithfull service of Allegiance in the same, or be in other places by his Commandment in his Wars, within this Land or without; that for the said deed and true duty of Allegiance he or they be in no wise convicted or attainted of High Treason, nor of other offences for that cause, by Act of Parliament, or otherwise by any process of Law, whereby he or any of them shall lose or forfeit Life, Lands, Tenements, Rents, Possessions, Hereditaments, Goods, Chattels, or any other things: but to be for the said deed and service attonly discharged of any taxation, trouble or loss.

As for the case that is put by them, it is very impertinent, and the whole Objection made both by Mr. Dukes and themselves, full of erroneous passages and mistakes. First, they assume the two Houses to be the whole Parliament. Secondly, they assume them to be a Court of Justice.

capture. Thirdly, they assume the Judges to have a power of suppressing any Delinquents, and maintaining themselves by Arms: The two former assumptions are absolutely false, and the latter true only in some cases, so far as they have order of Law; and no man deny such a power to be in either of the Houses, they may send Delinquents to appear before them in such cases, and in such a manner as the Law hath provided; for what is so done, is done by the King's Command in Law, which is to be obeyed before his Personal Commands. But they must proceed no further, nor after any other manner than the King commands in Law: And first, although the King's bare Command be not sufficient to warrant his Tenant or others to resist the sentence of his Courts, yet if the King in Person taketh up arms, and granteth Commissions to any to assist him, his Courts must then forbear all process of Law, and desist from all further opposition, as is provided in the foresaid Statute. And secondly, although the King doth not authorize the fact in Person, or by Commission, yet neither the two Houses in Parliament, nor the Judges can make what Ordinances they please to raise arms, or imploy their own Instruments to bring in Delinquents, but must proceed according to order of Law, and commit the whole carriage of the business to such of the King's Officers as are appointed for that purpose, which are chiefly the High Sheriffs of Counties, who are also confined by Law, and may not exceed their Commission. For both in the case put by the Reverend Divines, and also in all cases whatsoever, if Delinquents grow so strong that they be able to resist the *Passus Camerarius*, and cannot be suppressed but by a War, and by the *Militia* of the Kingdom, the Sheriff ought then to certify the Court thereof, and the prosecution of the matter must be left to the King, to whom only it is reserved to preserve the peace of the Kingdom in such cases.

Secondly, Against the King's Negative voice they urge the 2. *Objection*, Oath taken at his Coronation, whereby, they say, he is bound

bound to give his officers all such things as they shall see needful and
Common. They have found out a form in Latin, which
they say, was anciently used, and ought now to be taken. The
Form is this: *Concedo justis leges & consuetudinibus esse ser-
vandas, & promitto pro te eas esse promulgandas, & ad honorem
Dei corroborandas, quas vulgus elegit, secundum vires suas*

Resp. Concedo & Promitto.

The word *Elegit*, they say, may and ought to be taken
in the future tense, and doth oblige the King to agree to all
Acts that shall be thought convenient by the House. And to
confirm this, they alledge a Herald's Book, wherein, they
say, the Oath is found so Englished. They alledge also an an-
cient French Form, wherein, they say, it is so taken. The Form
is this: *Sire gardez vous a tenir & garder les loix & customes
nouvelles, les quels la communauté de vostre Royaume ont
eue, & les defendrez, & ferez a P honneur de Dieu a
vostre poeue.*

Resp. je le grants & promette.

Reply.

In all the authentical Records of the Exchequer, the
word *Elegit* is Englished in the *Present perfect tense*, and
not in the *future tense*, proposing no more unto the King,
but that he would uphold and maintain the Laws and Cu-
stomes only which are actually then in use when he taketh
the said Oath, not such as shall be offered him by the Hou-
ses. The words in the Oath taken by his Majesty following
the usual presidents, were these:

BISHOP. Sir, will you grant to hold and keep the
Laws and rightfull Customes which the Community of this
your Kingdom have, and will you uphold them to the honour
of God so much as in you lyeth?

KING. I grant and promise so to do.

The ancient Oath which is upon Record, used in the
time of Henry the eighth, in whose Reign, they say, the Her-
ald's, whose Book they speak of, lived, was this:

That

That he shall keep and maintain the Liberties of the Holy Church, of old time granted by the righteous Kings of England: and that he shall keep all the Lands, honours and dignities, righteous and free of the Crown of England, in all manner holy, without any manner of minishments; and the rights of the Crown hurt, decay or loss, to his power shall call again into the ancient estate; and that he shall keep the peace of the Holy Church, and of the Clergy, and of the people with good accord; and that he shall do in his judgment equity and right justice, with discretion and mercy; and that he shall grant to hold the Laws and Customs of the Realm, and to his power keep them, and affirm them, which the flock and people have chosen; and the evil Laws and Customs wholly to put out, and steadfast and stable peace to the people of his Realm keep, and cause to be kept to his power.

As for the French Form, I cannot but wonder they should alledge it; for it doth manifestly contradict that which they say and endeavour to prove by it, word for word it is thus to be rendered in English: *Sir, do you grant to hold and keep the rightfull Laws and Customs which the Commonalty of your Realm shall have chosen, and to defend them and give them force to your power?* Answ. *I grant and promise it.* Who is there that understands the French Tongue, which sees not that these words *aur' eslee, shall have chosen*, which are put in the future tense can have reference to no other Laws and Customs, but those only which the Commonalty shall have chosen when the King taketh the Oath; for the Form should have run thus: *Quels la Communauté de vostre Royaume esliera*, that is, *which the Commonalty of your Realm shall choose*, if Laws which were afterwards to be made had been intended in the Oath.

But let it be granted that *Elegeris* ought to be taken in the future tense, yet *leges & consuetudines* cannot relate to the Laws which shall be presented to the King by the two Houses in Parliament, for the word *vulgus* cannot be applied to the Lords.

Yet let that also be given them, the Oath binds him to protect and corroborate only *just Laws*, not all which they shall say are *just*; for it is evident whether *Elegit* be taken in the *preterperfect* sense, or in the *future* sense, that by *justas leges & consuetudines*, it is implied, that he is not bound to protect and corroborate all Laws and Customs, but only those which are *just*; whereof he himself assisted by his Justices and Council at Law, who ought to inform him where he wanteth information, is to be the Judge.

To conclude, Let the word *Elegit* and all the other words signifie what they please, it is not much important to their cause, for the said Latin Form was never used to be taken. In the time of Henry the third, the King's Oath contained only these three things: 1. *Se esse precepturam & pro viribus opem impensurum, ut Ecclesie Dei & omni populo Christiano vera pax omni suo tempore observetur.* 2. *Ut rapacitates & omnes iniquitates omnibus gradibus interdicit.* 3. *Ut in omnibus judiciis equitatem precipiat & misericordiam.* In later times the English Form above mentioned, without any alteration importing their sense, hath been used to be taken many ages together. Now if they could shew (which I believe they cannot) that divers Kings have taken the Latin Form they speak of, yet that is not sufficient to prove a Custom, seeing the practice was formerly, and is at the present otherwise.

3. *Object.*

Thirdly, Some infer that the King hath not a power of dissenting from the usual answer which he giveth when he refuseth to pass a Bill. *Le Roy s'advisera*, wherein they say he doth not peremptorily deny his assent, but only craveth time to deliberate upon it.

Reply.

^a Judge Jenkins fol. 32.
^b Hollinsh.
vol. 1. fol. 108

To what purpose should he crave time to deliberate about that which cannot be avoided, there is no consultation to be used *de necessariis*: Yet he may answer otherwise if he please, ^a *Roy ne veut*, or ^b *il ne ploist*, are usual forms as well as that.

4. *Object.*

Fourthly, they alledge Presidents, *The Militia and the chief Officers of the Kingdom*, they say, have been disposed of in Parliament.

If

If I should give a particular Answer to all their *Prop.* Reply. *Ans.* I should weary the Reader with such Impertinencies; sometimes they alledge a seditious Speech of some of the Members for an Act of Parliament; sometimes they say such or such a thing was done by Act of Parliament, and cite an *Author* in the margin, whereas no such thing is to be found in the said *Author*; Sometimes they urge a *Presidents*, wherein the Houses denied to give the King such subsidies and assistance, as he required to his Wars, because the said Wars were undertaken without their assent, and conclude from thence, that the power of making War, and treating with foreign States belong to the two Houses, when the reason of their denial was the miscarriages of the War, and the mis-employment of former Subsidies; not that they challenged the power of making War, or treating with Foreign States to pertain unto them. They thought it would have been more convenient for the better carrying on of the War at that time, if the King had undertaken and managed it, by their advice and assent, but claimed no right in the said power. But supposing all that they say true, and all their *Presidents* pertinent, I shall make these two general Answers; First, I say, that if the King, as in conscience he was bound, did at the request of the Houses discharge divers corrupt Officers, and substitute others into their places, or if upon just reasons and motives in the vacancy of an office he disposed of it by the assent and approbation of the two Houses, or ordered his War by their advice and direction; or if the two Houses had challenged such a power as is pretended; this doth not argue them to have a right in the Election of the said Officers, or that the carriage and conduct of the War depended upon their assent: It might be in the King, a free and voluntary Act of Grace, not an Obligation of Law: or he might doe it out of politick respects, to have their concurrence in some other matter; for although he cannot be forced by law to grant all their desires, yet in wisdom, policy and conscience he ought

ought to yield unto them when their desires are just, legal and prudential; it hath ever been damageable to the King, and for the most part to the Kingdom also, when differences between himself and his two Houses have not been fairly appeased.

Secondly, I say, that if they were able to alledge an Act of Parliament wherein such a Right were placed in them, such Acts by the Common Law of the Land were void, for the Rights of the Crown are settled upon it by the fundamental Laws, as hath been shewed, and cannot be separated by Act of Parliament. These are all the Objections here alledged touching the Supremacy, mixture and coordination of the two Houses; if any thing be omitted that seemeth to justify their cause, let any man undertake to answer me, and give me notice of it, and I doubt not but I shall be able, through the assistance of God, to make a full and satisfactory reply unto him. And this I shall desire of my Adversary, that when he maketh use of any authority he would cite the words at large, as I my self have done in all material points, and not make references only in the margin, that the Reader may judge of the scope and intention thereof, and be able to discern which of us dealeth faithfully, and which of us ingaged by Faction strive to elude the Laws, and wrest them from their genuine and native sense.

And thus by the *Grace* and *Mercy* of God, I have in part discharged my Conscience, being bound by all the bonds both of divine and humane Laws to oppose and withstand, as far as I am able, the false doctrine and principles which *Wolves in Sheeps Cloathing* endeavour daily to infuse into mens minds. I shall easily avoid, I presume, the usual calumny incident to those that write upon this subject; as namely, that under the pretence of promoting the Apostle's Doctrine of Obedience, they intend by flattering Princes, to promote their own interest. I would to God the condition of his

Ma-

17
blashemy and the Kingdom were such, as they might have
found colour to lay that imputation upon me: But I am
not ignorant that I might sooner have advanced my own
interest by adoring the *Pretended Parliament*, who dis-
pose of all mens estates and fortunes at their pleasure,
pretending as much right to all his Majestie's Kingdoms,
and to all the power and glory thereof, as the Devil did
to all the Kingdoms in the World, for that, say the
Members, *it delivered unto us; and to whomsoever*
we will we give it: And I know they use to distribute
their favours liberally to those that will *fall down and*
worship them. But how poor soever my condition
is, I have no inclination to buy my interest at so
dear a rate: I had rather perish in the performance of
my duty, than be confederate to their *Sacrilege* and other
impieties, or not render my Country that service which I
owe it, for whose liberty I would willingly sacrifice
not only my own interest, but my life. I should be
no good English man if I did not desire a better subject
to discourse upon, than the miseries of the Kingdom;
and if by turning away mine eyes I could help to quench
the flame that audacious and factious spirits have kin-
dled in it, I should have abstained from writing at this
time. But the danger and miserable condition thereof
calls for action to all those which had not rather see all
things managed according to the appetite of those *In-*
cendiaries and *Firebrands* of the Common-wealth, than
hazard themselves and their own interest for the Rights
and Liberties of the Kingdom. I could wish that all
whom it concerns would seriously consider that the *fat*
and *riches* of the Land was the patrimony and inheri-
tance of their Ancestors, and may be of their posterity,
if their own fears and negligence gives it not to their
enemies. I could wish also that the *Pretended Parli-*
amentarians would seriously consider their own condi-
tion, which I esteem to be most miserable. To speak
my

but to show, we thought, I would not
the house of commons, that as we are
Rebel, we make submission as far as we can
all that he hath gained by oppression and injustice.

And thus much we thought to say to all his Majesty's
And to all the powers and estates of the Kingdom
And to all the people in the world.

Soli Deo Gloria.

And thus much we thought to say to all his Majesty's
And to all the powers and estates of the Kingdom
And to all the people in the world.

I would willingly sacrifice
not only my own interest, but my life, I should be
no good Englishman if I did not desire a better subject
to flourish upon, than the natives of the Kingdom.
And if by any way I could help to procure
the things that are good and just, I would give him
all that I have in the world.

F. N. I. S.

And thus much we thought to say to all his Majesty's
And to all the powers and estates of the Kingdom
And to all the people in the world.

And thus much we thought to say to all his Majesty's
And to all the powers and estates of the Kingdom
And to all the people in the world.

